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FEDERAL COURT GRIDLOCK

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DOES THE VOTING RIGHTS ACT WORK?

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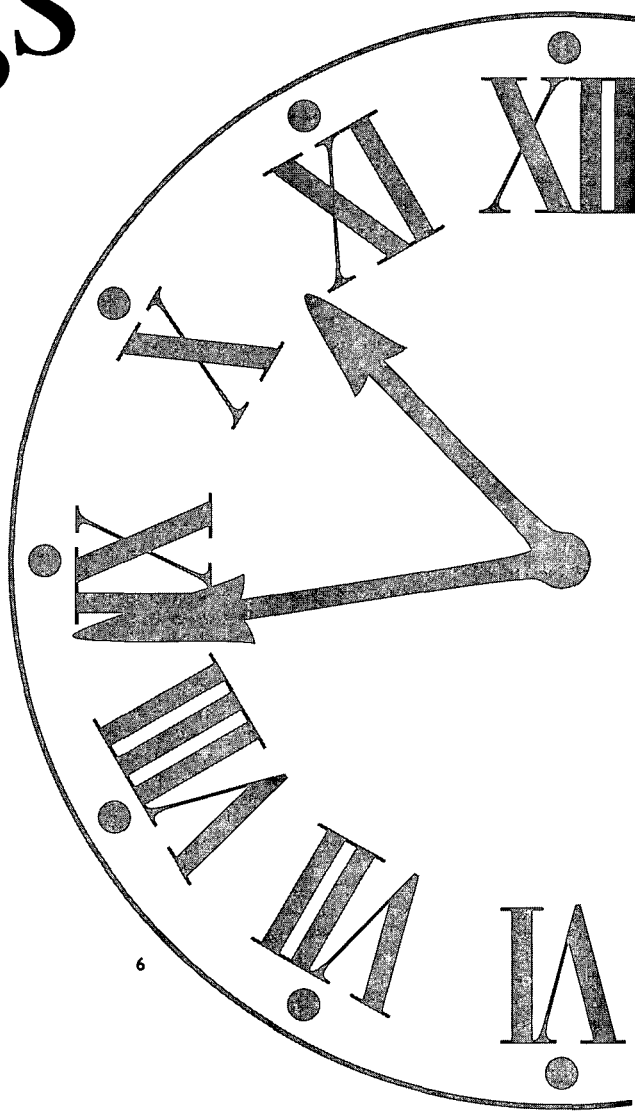

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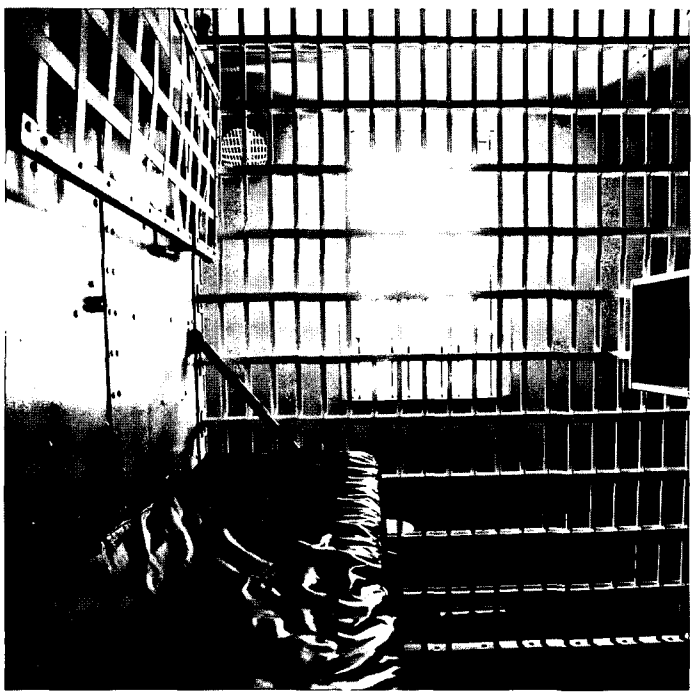
What Does Crime Really Cost?



■ I read "Does Prison Pay?" by John J. DiIulio, Jr., and Anne Morrison Piehl (fall issue) and commend the authors for their efforts to be objective and fair in the highly emotional debate over building prisons. As the author of the modest paper ("Making Confinement Decisions") that sparked so much debate, I am keenly aware of the passions that prison expansions can evoke. These emotions, which arise on one hand from beliefs that few people benefit from a prison term and on the other that criminals should be punished, are so deep-rooted that prison capacity is never likely to be decided by a cost-benefit calculus alone. Yet I submit that it is far better for policymakers to examine and dispute the costs and benefits implied by their decisions than to decide the public's well-being through purely political processes. My greatest personal reward from my work has been the many conversations with state and local officials on both sides of the prison-building issue who have honestly tried to incorporate some sense of public costs into their decisions.

Where do we go next in the costs and benefits of punishment policy? I am pleased that a handful of researchers have tried to refine and parallel my analysis with different data and approaches, but I think the real action is in unearthing what I omitted entirely: the indirect costs and consequences of crime. If we truly believe the conventional wisdom that crime is partly responsible for the decline of urban life quality, for persistent urban poverty, and for undereducated and desperate children, then we should expend some serious energy to find out what crime really costs. If crime creates a greater social harm than its immediate victims, then we need to know the rough magnitude of that harm as a first step toward its abatement. We are clearly better off with flawed facts than with rhetoric and ignorance.

Edwin Zedlewski, National Institute of Justice

Yes, Prison Pays

■ Throughout this century, most academic research on imprisonment has been utilitarian. That is, it has attempted to determine how effective penal practices are at achieving pragmatic goals, such as rehabilitation, deterrence, or incapacitation. There have been hundreds of studies of effectiveness and dozens of studies of cost, but almost none of cost-effectiveness. In all this time, the study reported by John DiIulio and Anne Piehl ("Does Prison Pay?" fall issue) is only the third serious attempt to perform the ultimate utilitarian calculation: a cost-benefit analysis. For that effort, and for their responsiveness to the criticisms of previous attempts, they are to be commended.

Alas, they are more likely to be condemned. Ostensibly, they will be criticized for flaws in their methodology, but their real sin is that they ask a politically incorrect question. However, if you take a utilitarian approach to criminal justice, you must sooner or later address the question of cost-effectiveness.

In fact, even if you take a nonutilitarian approach, you still may want to raise the question of cost. Suppose for the sake of argument that everyone now in prison deserves to be there and that everyone who deserves to be there is. Justice is now being done, but at what *net* cost? Most prisoners are held for just a few years, and they appear willing to tell us how many and what types of crimes they were committing each year just before they were imprisoned. From this we should be able to calculate the number and types of crimes that are being averted right now for these offenders. That is not as hard as projecting from the current prison population to a hypothetical expansion of that population created by pulling more in or keeping them longer. The data examined by DiIulio and Piehl are the best we have, and those data suggest that the net cost of imprisonment in Wisconsin is certainly much, much less than the budgetary cost of $25,000 per inmate, and may even be less than zero.

Charles H. Logan, University of Connecticut

Investor Groups in the Private Equity Markets

■ As Margaret Blair demonstrates ("Who's in Charge Here?" fall issue), corporate governance is a complex and dynamic process. Not only do institutions represent some 45 percent of the equity markets today, but they also represent 60–70 percent of the ownership of new public companies—those issuing stock to the public for the first time. They are also becoming more important in the private equity markets. For every public company large enough to attract institutional support, there are by some estimates more than 25 such companies that are private. To invest successfully in these, institutional investors are providing capital for professional investor groups, thereby endowing the investor groups with governance responsibilities. The LBO funds of the 1980s were only the first wave of such investment.

The governance theory employed by the investor groups is alignment: the aim is to ensure that the interests of the management of the private company (leveraged or not), the intermediary investor group, and the institution, all of which have funds at risk in the same securities, are aligned. Still, the alignment of interests created thereby is at best imperfect. As the Pennsylvania takeover law amply demonstrates, management serves—indeed, must serve well—many constituents

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in addition to providers of capital. And the pressures on capital today go beyond pure economic return to pressure to recognize societal trade-offs that may lower returns. Because sources of capital increasingly acknowledge such trade-offs, the investor groups responsible for private company governance (which have their own capital at risk) are required to balance the perceived demands of many interests while still providing superior returns to capital.

After more than a decade of experience as investors of our own and institutional capital in controlling some 40 private companies, we have learned to trust our "alignment" model, but to recognize that many others can work. As Blair makes clear, each decade seems to have had its own character; and no doubt Mike Jensen is asking right now where the governance of all these newly unleveraged, public companies of the 1990s will come from once they are broadly owned and the investor groups are gone from the Boards. Much thought remains to be given to this wonderfully involving problem.

Carl Ferenbach,
Berkshire Partners

Corporate Accountability and Risk Taking

■ I was disappointed that in the final sentence of an otherwise well-written and well-researched article, Margaret Blair ("Who's in Charge Here?" fall issue) warns that notions of accountability can destroy the risk-taking essence of corporate progress. This persistent canard also appears in the Business Roundtable's most recent report on corporate governance. But there is no evidence to suggest that it has ever been true. First, no court has ever held managers personally liable on account of good faith "efforts to innovate, take risks, and compete." Courts will not second-guess the "business judgment" of managers and directors, even for decisions that turn out to be wrong. Liability has been limited to fraud or self-dealing. Second, recent changes in state law have eliminated the possibility of money damages being levied even against "negligent" corporate officers and directors. Why is a concept that is demonstrably untrue so durable? It can only be that it is a convenient justification for concluding that "all is for the best in this best of all possible worlds," and woe be unto she who urges changes.

Robert A. G. Monks, Institutional Shareholder Partners

Bush's Latin Initiative: On the Right Track

■ Carol Graham ("The Enterprise for the Americas Initiative," fall issue) is right in asserting that President Bush's Enterprise for the Americas Initiative cannot be a comprehensive development strategy for Latin America. But this is hardly much of a critique since the administration never had that objective in mind. Nor is the initiative simply a strategy for rewarding good economic performers, as Graham suggests. It was conceived, instead, as a means, first, to reassure Latin American countries that Washington was not about to abandon the region in a post–cold war world; second, to reinforce an already snowballing trend in Latin America toward free markets and liberalized trade; and, third, to present a positive agenda for President Bush's then upcoming trip to South America. On all three counts, the initiative, even though it is still mainly a set of promises, has so far succeeded beyond expectations and, indeed, has helped to place U.S.-Latin American relations on a smoother and more constructive path than they have been for years.

Yet the initiative's potential economic contribution, even to Latin America's good performers, remains very uncertain. Even the most liberal calculations suggest that the initiative's debt reduction and investment promotion provisions will produce only small benefits. Free trade and associated investment will provide the main economic gains, but only, as President Bush and others have insisted, in the very long term.

On one point, Graham should feel reassured: Chile's new democracy is strong enough not to be endangered by the failure of free trade negotiations. Nor will the failure of such negotiations lead to support for extremist politicians in Brazil and Argentina. President Bush's initiative has clearly had a significant impact in Latin America, but its importance, politically or economically, should not be exaggerated. Most of what is crucial for the region's future will happen inside each country.

Peter Hakim,
Inter-American Dialogue

Mobilizing the National Guard

■ In Martin Binkin's references to the Reserves ("The New Face of the American Military," summer issue), he was right on target when he stated that total success of the roundout concept will require more cooperation and greater respect from the active officers. But he did badly miss the mark when he said roundout brigades most likely would require six to nine months of training. If you eliminate all the jerking around and time wasted because of poor planning by external forces, the 48th Brigade was certified with 51 days of actual training at the National Training Center. Next time, full mobilization could be accomplished in 60 days or less now that the Total Army knows how to do it.

Roundout and rapid deployment are really factors of sealift. The National Guard combat brigades can be ready long before the sealift is available unless changes are made.

Nathaniel H. Robb, Jr., Major General, North Carolina National Guard, Adjutant General

A Republican Mole?

■ An article of particular interest to my wife and me was Thomas Mann's "The Democratic Opposition" (fall issue). My wife was reading along, agreeing with the writer, out loud, and she reached the end of the first page in mid-sentence: "Let them at least be the source of some clear thinking about how the Democratic party might lead this country to . . ." She turned the page, but there isn't any more. The fall issue has no more pages. Mann is throttled in mid-sentence. Is this a Republican plot? Is there a mole at Brookings?

Kenneth Zierler, The Johns Hopkins University School of Medicine

Ed. The last line ("a better future.") was missing from Thomas Mann's article. The lost line was actually the work of a technological gremlin. Apologies to readers and to Thomas Mann for the error.

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The Judicial Confirmation Process

BY ROBERT A. KATZMANN

Recent events surrounding the confirmation of Judge Clarence Thomas to the Supreme Court have provoked cries from across the political spectrum for reform of the process. Concern is entirely legitimate. But if we are to focus on what should be changed, we should be clear as to what has changed.

Critics blame the confirmation "mess" on the injection of ideology beginning with the Robert Bork hearings; on "divided government," with Republicans habitually at one end of Pennsylvania Avenue and Democrats at the other; and on unprecedented influence by interest groups. A look backward calls these claims into question.

Both presidents and senators have long considered the ideology of judicial nominees. Abraham Lincoln wished "for a Chief Justice who will sustain what has been done in regard to emancipation and the legal tender." Before nominating Oliver Wendell Holmes, Theodore Roosevelt sought assurances from Henry Cabot Lodge that Holmes "was in entire sympathy with our views." For its part, the Senate rejected George Washington's candidate for chief justice, John Rutledge, because he had opposed the Jay Treaty. In 1930 Senator William Borah successfully opposed the nomination of Judge John J. Parker. Recalling the Senate's rejection of Roger Taney nearly 100 years earlier, Borah asserted: "They opposed [Taney] for the same reason some of us now oppose the present nominee, because they believed his views on certain important matters were unsound. They certainly did not oppose him because of his lack of learning, or because of his incapability as a lawyer."

Neither can recent controversies over confirmation be blamed entirely on divided government (although it can significantly affect outcomes). The controversies may spring as much from the growing recognition of the role of courts as from tensions between the White House and Capitol Hill. Indeed, in a Senate controlled by Democrats, some prominent Carter nominees had to fend off critics concerned about the direction of the judiciary.

Likewise, interest groups have long exerted influence on the process. Business groups, for example, campaigned against Louis Brandeis, and labor unions and civil rights groups battled John Parker.

What has changed is the way ideology is explored and interest groups operate. Today ideology is the subject of scrutiny in Senate hearings. Before 1925 no nominee had testified at a hearing. Until the Bork nomination it was thought unseemly to delve into specific cases. Before Bork, interest groups tended to lobby senators directly; since, they have used the news media to generate grassroots pressure.

Most of us would not want to turn back the clock to a time when nominees were confirmed without any public scrutiny or without the chance to defend themselves before the Senate. Nevertheless, recent confirmation processes have highlighted issues that need to be addressed.

One is the perennial controversy over the balance of responsibility between the president and the Senate in choosing judges. Much is made over the fact that the Constitution prescribes the order of the appointment process, but little else. Traditionally, the issue has generated rather sterile debates about executive versus legislative prerogatives. It might be more fruitful to focus on the unique role of the third branch in an ever more complex society to sharpen thinking about the kind of judiciary we want to have.

Another issue is how to ensure that legislators have enough information to judge whether the nominee satisfies basic criteria, however defined, without infringing on the impartiality and independence of the nominee. It would be helpful to have a better shared understanding among the branches as to appropriate kinds of questions and responses, particularly about specific cases. At the hearings, it might be useful if special counsels, under the guidance of the senators, engage nominees in detailed but appropriate discussions of their values and perspectives. The hearings themselves might be more efficiently organized by subject matter. Investigations of personal misconduct might best be handled, at least initially, in executive session.

Other issues deserve scrutiny. One is the propriety of activities outside the formal forums for advice and consent, particularly media campaigns to lobby the Senate. Another is the effect of the confirmation process on the capacity to attract people to serve in government. The time is ripe for a small study commission of former and current officials of the three branches to tackle these questions.

Conflict in the confirmation process may be inevitable. In the end, reform may resemble "tireless tinkering," as Gilbert Steiner once put it, more than fundamental change. That may be the way decisionmakers want it. Politics being what it is, attention will probably soon fade from the confirmation process. If it does, then those decisionmakers who bemoan the process will have to bear some responsibility. ■

Robert A. Katzmann is president of the Governance Institute and a visiting fellow in the Brookings Governmental Studies program. He is completing a book, Courts and Congress

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The Tyranny of Time

EASTERN EUROPE'S RACE TO THE MARKET

SUSAN L. WOODWARD

Hungarian Proverb:
Anything that must be done in a hurry takes time.

Within months of the political revolutions that swept the nations of Eastern Europe in 1989, attention focused on the urgency of economic revolution, of moving from socialism to capitalism and from nonmarket to market economies. Everyone knows that stable, prosperous economies are the only guarantee of healthy governments and peaceful societies, and political leaders in Eastern Europe and in the United States and Western Europe have been understandably anxious to seize the moment of political consensus to introduce market economies fast, for fear it could be lost in the process of creating markets. Insisting both on predesigned programs for this transition and on speed, policymakers and analysts have come to judge all developments in these countries by commitment to markets and pace of implementation. But market economies also require stable and legitimate political regimes. Though there is much discussion of how politics can derail the economic reforms, there is almost no recognition that political revolutions take time to complete or that the very rapid economic reorientation can prolong the political uncertainty and undermine the possibility for a successful and peaceful democratic transformation.

This recognition is particularly important, however, because the West has not been correspondingly speedy in taking steps to assist the reorientation. The burden of adjustment has fallen largely on the governments of the countries of Central and Eastern Europe. New leaders in these governments are feeling the pinch between the pressure for rapid economic change and the time it takes to create stable rules, democratic governments, and guarantees of basic rights on which economic stability depends. Foreign demands that democracy function automatically and that governments keep their economic reform programs on track by managing politically all their resulting hardships, refusing popular pleas to slow down or at least to dilute the bitter economic medicine, suggest an air of unreality. Both the stakes and the risks of this political process are high. The civil war in Yugoslavia, although many dismiss it as a case of ancient ethnic hatreds, is a nightmare of all the tensions and conflicts that the dual transformation can unleash.

Susan L. Woodward is a visiting fellow in the Brookings Foreign Policy Studies program. *She wishes to thank Istvan Csillag, Maria Csanadi, Andras Gero, Laszlo Bruszt, and Martha Lampland for help in this discussion.*

Political Revolutions Are Not Democratic

Although the ease with which the old regimes seemed to topple during the upheavals of 1989 convinced most observers that the democratic revolution had already been made, the political upheavals of 1989 and elections of 1989–90 were only the early phases of a political revolution. A massive struggle for power is now going on. Instead of settled legitimacy, there is an authority vacuum. The choices that people perceive as they try to construct markets and democracy do not, moreover, favor democracy.

The democratic revolution began as an anticommunist revolution, and it is still trapped in the politics of that struggle. At the same time, electoral politics now demands that political parties organize out of the myriad forces for change that joined student organizations, intellectual clubs, social movements, churches, rights groups, unions, and political parties into large revolutionary coalitions irrespective of political beliefs and economic interests. These two contests, one to

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eliminate all remnants of the former regime and the other to win elections, form governments, and formulate and debate policy, are sometimes at odds. Democratic elections may assist the struggle for power, for example, but if they do not, the goals of revolution are more important. In the view of the revolutionaries, democratic institutions will restrain the exercise of power *after* one's old enemies have been deprived of any real power. This perspective, it should be said, is not a reflection of any lack of democratic tradition and its habits of tolerance and compromise, as so many assert, but a consequence of the battles being fought, the speed at which so many insist that the economic program must advance, and the meagerness of the economic resources available. The stakes of losing each battle are simply too high.

The charges and countercharges of revolution continue to divide and polarize. The tactics of the anticommunist struggle (such as calls for public trials of those "guilty" of the economy's decline and ecological disasters) restrengthen and unify through fear and self-protection the former communists under attack. Allies in the revolutionary upheaval turn on each other. Street demonstrations are still easier to organize than a network of local party offices and activists. Political parties have only begun to identify their constituencies. And as one might expect, those moralists whose courage was essential to the first stages of that upheaval find themselves disillusioned at the meanness of the struggle for power and discouraged at the exhaustion and loss of private life that their public life requires. Time has been far too short to develop moderate language and regularized procedures for competition between all political parties, procedures that pit candidates against each other not as enemies to be eliminated but as long-term occupants of the same political arena and even potential allies.

Elections and parliamentary politics cause discord and fragmentation in the anticommunist camp. Party lines are enormously unstable, and recrimination abounds when the solidarity and unity of revolution fails. Citizens complain that there are too many parties—having to choose among upwards of 800 in some elections—and retreat into silence. Less than 6 percent of the electorate turned out to vote in a June 1991 Hungarian by-election for parliament. Electoral laws to favor small parties and the democratic impulses of the revolution lead to indecisive electoral results. In the Polish parliamentary elections of October 27, 1991, no party received more than 11.7 percent of the vote, and 29 parties won seats. The result is unstable cabinets and coalition partners with power way beyond their electoral draw. The leverage of the Smallholders' Party over land privatization in Hungary now pales before the discomfort of political leaders in Romania and Slovakia who must enter into coalitions with parties representing Hungarian minorities after elections in the second half of 1991. And ethnic conflicts loom in Bulgaria because coalition with the party representing the Turkish minority is necessary for the Union of Democratic Forces to govern. Leaders and citizens already yearn for strong executives in response.

The Language of Revolution

The revolutionary situation is particularly apparent in the language of political life, whose tone can deceive outsiders and heighten perceptions of risk within. The language of revolution is one of loyalties. Opponents even among friends of the previous day become "enemies of the people." People who choose to vote their conscience against the position of their party's leadership may be labeled traitors and branded with placards on apartment doors or met with stony silence in parliamentary corridors. Liberal reform parties become as intolerant of a free press as the communist *nomenklatura* still holding many positions. Speaking in a language familiar to their societies' politics, the literate public finds the "Democrats" and "Liberals" more "Bolshevik" than the communists.

Language also defines fates. One of the most fundamental elements of the current struggle is over personnel: who should and will staff positions of authority, from the civil service to economic advisors to factory management. Because this choice is a revolutionary one—kick out the old as thoroughly tainted, and bring in the new—the criterion of competence is again being defined politically, or is decidedly secondary. But that party membership was often a requirement of such positions in the communist period did not mean the person holding the position was not also technically skilled. Nor were those in the opposition necessarily more competent. Indeed, in places like the Czech and Slovak Republic, the opposition first formed among Prague Spring dissidents from the 1960s who had been deprived for 20 years of positions that might have kept them current professionally. New governments privately acknowledge real concerns over the shortage of skilled replacements while they complain publicly that communist "holdovers" in the middle ranks are thoroughly incompetent. Citizens are often appalled at what they consider the incompetence of the new.

The political purge is particularly anguished in those countries, such as the former German Democratic Republic, the Czech and Slovak Republic, and Romania, where the security apparatus was strong and pervasive. Here the character of "revenge" is most blatant and uncompromising. But as President Vaclav Havel told interviewers in the middle of 1991, even the most pure of the leading opponents of the communist regime feel a growing sense of unease, doubt, melding into outright fear of an unknown complicity to be discovered in the rifled files of revenge.

The revolutionary purge, although encouraged by Westerners' view that everything communist is corrupt, is complicated. The political revolutions of 1989 were not the first steps toward reform and markets; indeed, they would be difficult to imagine without the policies initiated earlier by reform communists. In countries such as Hungary and Yugoslavia, where these reforms evolved over decades, the split between communists and anticommunists ignores an enormous middle who are neither, and who are among the most talented. In other countries such as Bulgaria, where the reforms appeared more recently, professionals who only a few years before aided the reform communists,

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whom they saw as the best hope of liberalization, now find themselves cast in the camp of the old regime. The purge mentality makes them ineligible for any position of trust in the new public offices, even though their sympathies and interests lie more with the new governments. Managers under the old regime become incompetent by political definition and are being subjected to judgments Western managers never experience: election by their workers and certification by state competency tests. Professional colleagues find themselves within months pulled one way and then the opposite by professional and personal loyalties that do not fall along the same political lines.

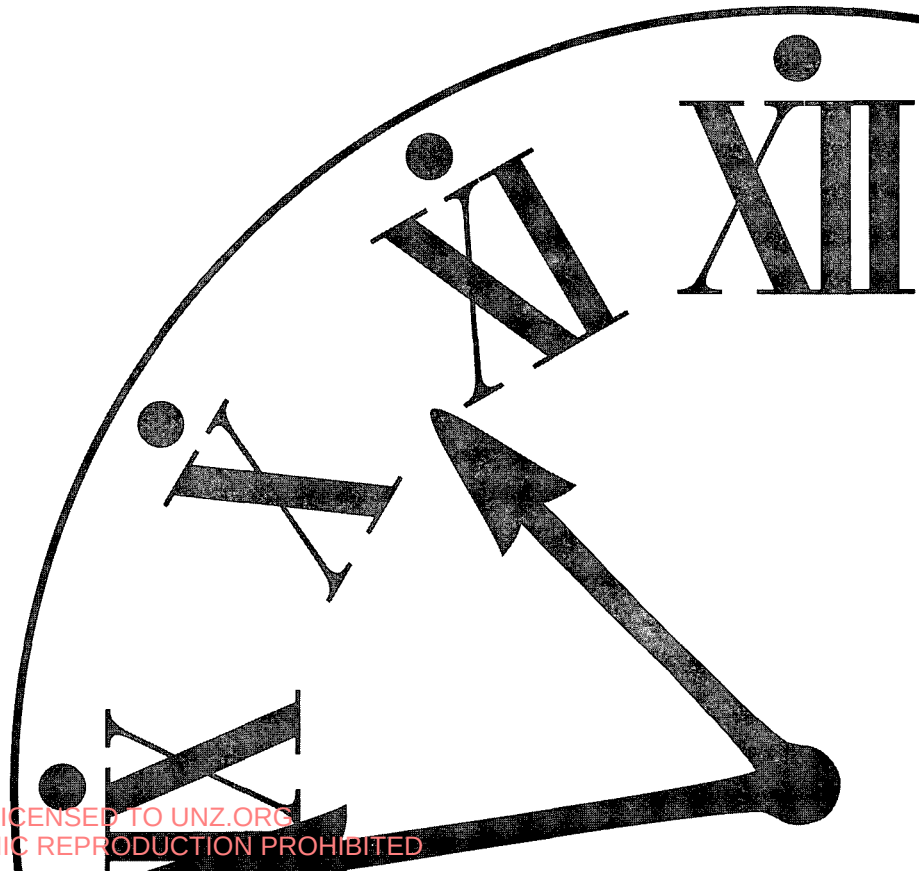
The personal risks also imperil the new system. The line between personal and public accountability and criteria in making fundamental political decisions has not yet been drawn. Because political instability is high, people resort to personal ties they trust. This understandable development, however, also delays the creation of procedural safeguards and reliable institutions so necessary to a democratic regime.

In Search of a New Political Language

In this transitional, still revolutionary stage of political life in Eastern and Central Europe, there is one chapter to which the political revolutions did write an end: they deprived Marxist language of any further legitimacy. As yet no new political language—a language of interests, identities, and goals on which public action depends—has evolved to take its place. The loss is particularly problematic for industrial workers who have much reason to organize, protest, and propose alternatives to current policies, but who must now find another language to express their interests before they can organize successfully. Yet it also affects political parties and social movements, whose kinship with the period between the two world wars is not simply organizational ("historical" parties—peasant, liberal, and national—first prepared to wage electoral campaigns). The search for a new language they could call their own has led to the precommunist past and the current revolutionary preoccupation with a recaptured national identity and its "historical" struggle for self-determination. The predominance of intellectuals—above all, historians and writers—in parliamentary caucuses and the offices of state reflects the importance of language and domestic symbols to the political process.

But this alternative language is also profoundly nationalist. It contains many of the hostilities that the communists fought (unsuccessfully, it now appears) to overcome, and it is threatening to many people. Modern alternatives exist, it is true, in the many ties to Western political parties that offered financial assistance and organizational advice immediately after elections were first set, and they continue in exchanges of younger activists and contributions to party coffers (suggesting the mid-term advantage of Christian Democrats and Liberals). Yet neither language has yet been domesticated or modernized in a way that suits local needs in the 1990s. The talk heard in cafes and parliamentary lobbies is still reactive, seeking control over risky and fast-paced change by domesticating the foreign ideologies and pressures overwhelming policy choices. The more that hopes of a "third way" in economic organization between Eastern communism and Western capitalism are pushed aside in the neoliberal embrace of Western models by most governing parties, the more the struggle to retain the pride of national identities will inflame the political sphere.

The charges and countercharges of revolution continue to divide and polarize. The tactics of the anticommunist struggle . . . restrengthen and unify through fear and self-protection the former communists under attack.



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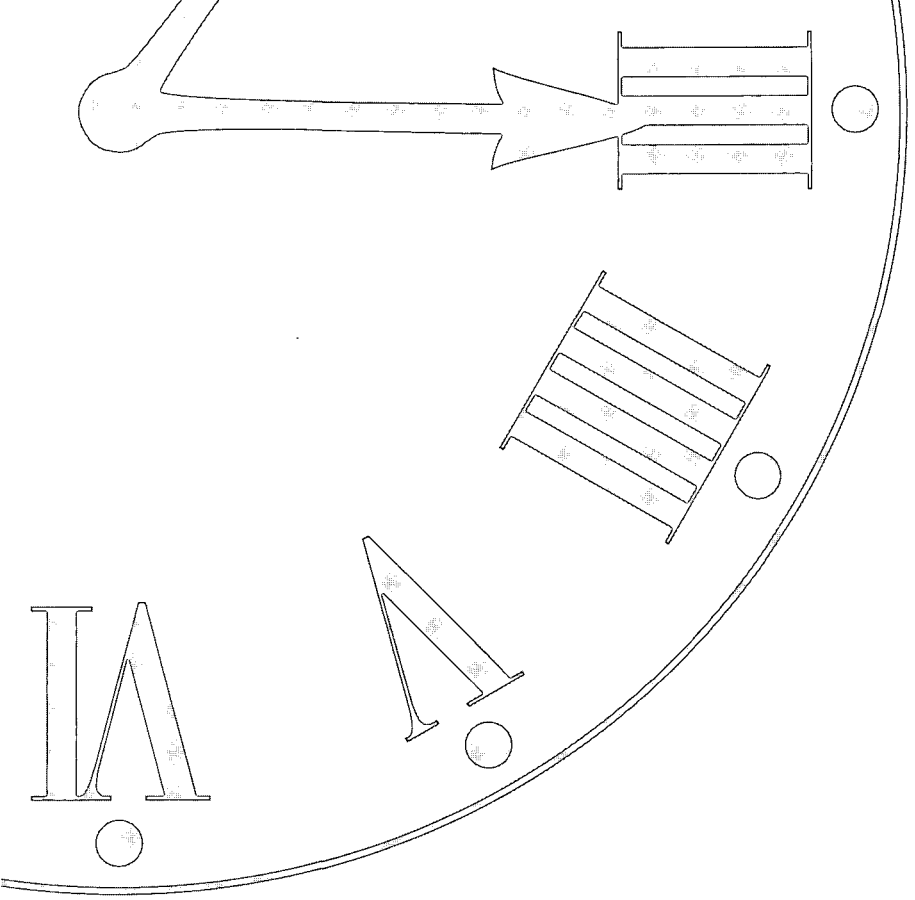

The priority given by political elites and foreign advisors to the economic program means that basic constitutional issues are being defined by the economic program, not by the will of the people or democratic goals.

Democracy versus the Market?

The widespread assumption that the political revolution is complete and that democracy was achieved in Eastern and Central Europe with the downfall of communist monopoly is due in part to a view of democracy as the free expression of popular will and the guarantee of elections to force leaders to implement that will. Once competitive elections are possible, by this notion, the political process can be driven by real conflicts of interest and shifts in public opinion by which political leaders assess popular will. Unlike the economic transformation, the stages of political change cannot be preprogrammed and must be spontaneous. Each country will be unique, and outside influence is viewed (by foreign governments as well as insiders) as interference in the sovereign rights of people to determine their fate.

In fact, democratic government is government by rules of procedure that guarantee civil and political rights (and occasionally social rights) and that limit the exercise of unrestrained power. It requires new constitutions, enabling legislation, and independent judiciaries that question the most fundamental values of statehood, citizenship, property, and governmental jurisdictions. Yet the priority given by political elites and foreign advisors to the economic program means that these basic constitutional issues are being defined by the economic program, not by the will of the people or democratic goals.

Noticeable to all is how little room for domestic political choice this economic program gives. In their desire for Western integration, for example, governments have chosen wherever possible to write constitutions, laws, and regulations according to European Community statutes, and thus to demonstrate their readiness to be good members and then save redrafting when membership is won. By agreeing with foreign advisors and financial institutions that priority should be given to macroeconomic stabilization, currency convertibility, and the financial and trade reforms necessary for Western credits, governing parties also accepted a decisive division between executive and parliamentary authority. Liberal economists, advisors from international financial institutions, central bankers, and ministers of finance program the economic transformation quite independently of elected representatives. The difficult choices in legislating structural reform go to parliaments whose refound budgetary authority is strictly constrained by tight monetary and fiscal policy.

The near-dictatorial authority of this executive group is reinforced by the foreign debt burden of all countries in the region (with the exception at the moment of the Czech and Slovak Republic and Romania) and their desperate need for access to foreign capital. Debt repayment and the accompanying anti-inflation program set sharp limits on the government budgets of the functional ministries and parliaments, and in turn on local government. The goal of reforming central banks and privatizing property is to gain independence *from* democratic pressures on wages and jobs and parliamentary debate on social programs.

Political Consequences of the Economic Programs

Market economies are being created by top-down price stabilization—either a domestic "shock therapy" program as attempted in Poland and Yugoslavia under the advice of Jeffrey Sachs of Harvard University and Ministers

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Mazowiecki, Balcerowicz, Markovic, and Pregl or an International Monetary Fund conditionality program as in Bulgaria, Romania, Hungary, and (independently out of economic conviction) in the Czech lands. In both, the change is felt in the population first as an enormous rise in prices, especially of basic goods and services—bus and rail transport, heating and cooking oil, electricity, petrol, bread, meat—and of borrowed money. Thus the first political consequence of the economic reform program is friction between the people and their government. The citizens' earliest experience with their new democracies is one of cold insensitivity to their daily existence, and the earliest institutions of those democracies are formulated in response to strikes for compensating wage or price increases. Hungarian policies toward popular protest have been set antagonistically by the government's response to the taxi and truck driver strike that closed the bridges across the Danube, and therefore stopped most of Budapest traffic, for nearly five days in October 1990. The new governments in Bulgaria, Romania, and the Czech and Slovak Republic sought very early to preempt strikes that could shut down industry or transport because of the declining real incomes that these price rises meant; in negotiating social pacts between government, employers, and unions that sought a period of grace without strikes from labor, they also decided for quite some time who would represent business and labor.

Because a centerpiece of these economic programs is drastic cuts in government budgets, a second consequence is that governments are able to play only a limited role in social rights and public services. Indeed, many public functions have to be shifted into private hands. But because few private hands hold much ready capital for purchase, intermediate steps of privatization have had to be devised. The fate of public sector firms has been handed to foreign accounting and management firms or simply left in limbo as governments await foreign buyers. Voucher schemes in the Czech and Slovak Republic and Poland that give each citizen a share in privatizing firms are criticized for prolonging the process. Some public obligation for social services has been preserved by transfer to local authorities, but to compensate them local tax authority is increased or localities gain ownership of real estate or the task (and profits) of "small" privatization (that of retail shops, small firms, and services of local economies). Such new power then increases the stakes of controlling local government and shifts the political struggle between government and business to cities and towns. Budget cuts also limit the size of the civil service, but if the standard solution to allow cuts through attrition and no new expansion beyond retirements is followed, then employees of the former regime become privileged.

Channeling Trade Westward

Political consequences also followed from the decision to liberalize trade rapidly at the start and to redirect it westward by closing the Soviet-East European trade bloc and switching all eastern trade as of January 1, 1991, from bilateral clearing accounts to convertible currency and world market prices (called "dollarization"). Overnight the purpose of more than half the staff of the Ministries of Foreign Trade disappeared. So, too, did the markets of many producers, from computer companies, bus makers, and forklift and ball bearing producers to farmers. But these producers cannot easily readjust in what they produce and to whom they sell until they are sure who owns their factory or farm.

Farmers throughout the region, in turn, are holding great stocks of overproduced food, or refusing to harvest crops they know they cannot sell, and choosing not to plant the next season. In Poland the government conceded to farmers' demands for higher agricultural tariffs (on the grounds that the European Community barriers to agricultural imports gave them no choice), but in Hungary the government refused to negotiate bilateral contracts with the Soviet Union that would restore agricultural trade, despite predictions of a "hot" autumn of farmer protest, because it saw this as delaying farmers' economic adjustment. In Serbia the government will surely feel pressured to grant subsidies to impoverished farmers by printing new money as it did in 1990 (giving further cause to the Slovene and Croat move for independence), and in Bulgaria the issue not only prevents former owners from taking their land (for fear of reprisals) but engages the entire debate on security and Bulgarian-Soviet relations in the future. Knowledgeable observers predict a minimum of three years without agricultural production while the new agrarian reform and external markets take time to settle. It will be a wrenching change from the former abundance of food.

Revolution and Property

Meanwhile, the insistence of the economic programs on rapid privatization has necessarily entangled questions of property with the process of revolution. The political desire of anticommunist parties to correct the wrongs of the communist regime (but not ones before it) by returning property nationalized in 1948 has handed back to many former owners property they no longer wish to work. Retail shops returned to families of pre-1948 owners in the Czech lands, for example, left many neighborhoods bereft of groceries, services, and trades because few of the former owners had any desire to run them and keep them open. The delicacy of the question of land ownership made it ripe for debates about citizenship and nationalist feeling that have led to agonizing delays in legislating new rules and tested the independence of courts on the issues of partisan right and wrong in the programs of restitution. In Hungary, the Constitutional Court declared that compensation for property taken in 1948 discriminated against those whose property was confiscated in 1938 or during the war, thus creating grounds for numerous legal battles and for even higher taxes from the general citizenry to pay compensations for actions that occurred long before they were born. In Romania, local authorities withhold documents necessary to file claims for land if they distrust the applicant's voting preferences.

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The Impulse toward Authoritarianism

Finally, the severe austerities of an economic transition that proceeds from rapid adjustment of foreign and domestic currencies and prices and the difficulty of enforcing such costs when all bases of authority are up for grabs have together led governments to seek stronger leaders than a democratic transition might endure. Polish President Walesa sought "special powers" over economic legislation in the spring of 1991 out of impatience with the parliament's slower pace. The threat of economic crisis in Hungary and Serbia led opposition parties to propose national unity coalitions of government and opposition (but to fail). In Romania and Bulgaria such coalitions became necessary because former communists won the elections but had insufficient authority to govern the entire country, and the stalemate between government and opposition was making economic reform impossible.

Although the privatization strategies have led to ever greater decentralization and pluralization of actors, each wanting to spread the risk and yet make a profit, the pressures for greater executive authority and centralization from the immediate problems of trade, debt, and currency stabilization appear the more powerful trend. Where the conflict over budgets and the pace of economic policy leads instead to regional drives for national independence (as in Slovenia, Croatia, and Slovakia), a move for decentralization can end in strong-arm, scarcely democratic, government.

Popular Culture

The return of openly expressed ethnic, religious, national, and gender antagonisms in many parts of Central and Eastern Europe over the past two years has taken many by surprise. Outsiders see the former communist regimes as a lid of repression on ancient (but abhorrent) emotions that exploded after the lid was removed. But Eastern and Central Europe have not been in a deep freeze for 45 years, and many of these emotions are less irrational than one might wish. The turmoil at present does not represent the death throes of an old culture but the response to new circumstances and to the political language of the revolution. These responses to the hardships of the economic transition have become raw material for politicians, who also have few other resources in their mutual competition.

The developing market economy offers few opportunities for gain. For entrepreneurs, the stabilization program has created a deep recession that has undercut what were often flourishing enterprises even before 1989. These businesses compete with local governments over the use of local lands and pay ever higher taxes to revenue-starved local governments. Although they recognize society's benefit from foreign investment, they also find that they cannot compete with the far greater wealth and resources of Western companies. Interest rates for credit require profit rates to repay loans that are too high for most legitimate businesses, leading citizens to fear a rise in prostitution, crime, and drug running, and leading private as well as public businesses to demand lower taxes. The prices of basic goods have hit pensioners and wage earners so hard that insecurity dominates all perceptions of new opportunities, and the dominant emotion is fear.

Many have yet to experience the unemployment they know is coming in 1992, and prefer not to think about the final removal of controls on housing rents and the decisions of new private landlords. Others watch events in the agricultural sector and openly worry about mass starvation in the cities this winter. Many respond by voting for candidates who directly address their insecurities—whether an unknown demagogue in Poland, former communist parties in Bulgaria, Serbia, Romania, and Poland, or nationalist parties in many parts. Voters do not, however, always admit such votes in surveys because the language of revolution leads them also to fear reprisals.

Migration is the form chosen by the more impatient and the younger, who prefer not to wait out the hardships or discrimination any longer but to seek prosperity and democracy where they already exist, in the West. Lines form early and long before the visa sections of Western embassies, and the number of refugees and undocumented migrants has grown substantially in 1991.

Under these circumstances, the desire for job or income guarantees is not a holdover from a communist past that so many criticize but a rational demand for greater predictability so that economic calculations can be made, a demand for some assurances that life will improve if they remain at home. Where these are denied, people understandably seek security in personal loyalties or scapegoats for their fears, both of which play on old prejudices and feed politicians' politics of revenge.

The Tyranny of Time

The interaction between the two revolutions in Eastern and Central Europe is felt above all in images of time. There is a sense of entrapment, between the insight of the Hungarian proverb above, that nothing can be accomplished rapidly unless it is well prepared in advance, and the belief of most economic advisors that the more rapidly marketization and privatization occur, the more successful they will be. And there is fear that Western impatience with the pace of reform will cut that time even shorter.

The tyranny of time is felt more intensely the more recent and multiple are the changes sought. In that situation, reformers most need advance preparation, but do not have the political luxury to proceed slowly. Leaders in Hungary, where the movement toward a market economy began almost 30 years ago, worried less about the cost of bad political choices than did opposition reformists in Bulgaria during 1991 who believed they had less than one year to accomplish all their reform goals, or lose the political revolution. The programs of the Polish presidential race, between candidates Mazowiecki and Walesa, differed little except in their rhetoric of time: the one insisting on "slow and thorough" reform, the other expressing the impatience of the population and demanding a "speed up" of elections and privatization. In contrast to most for-

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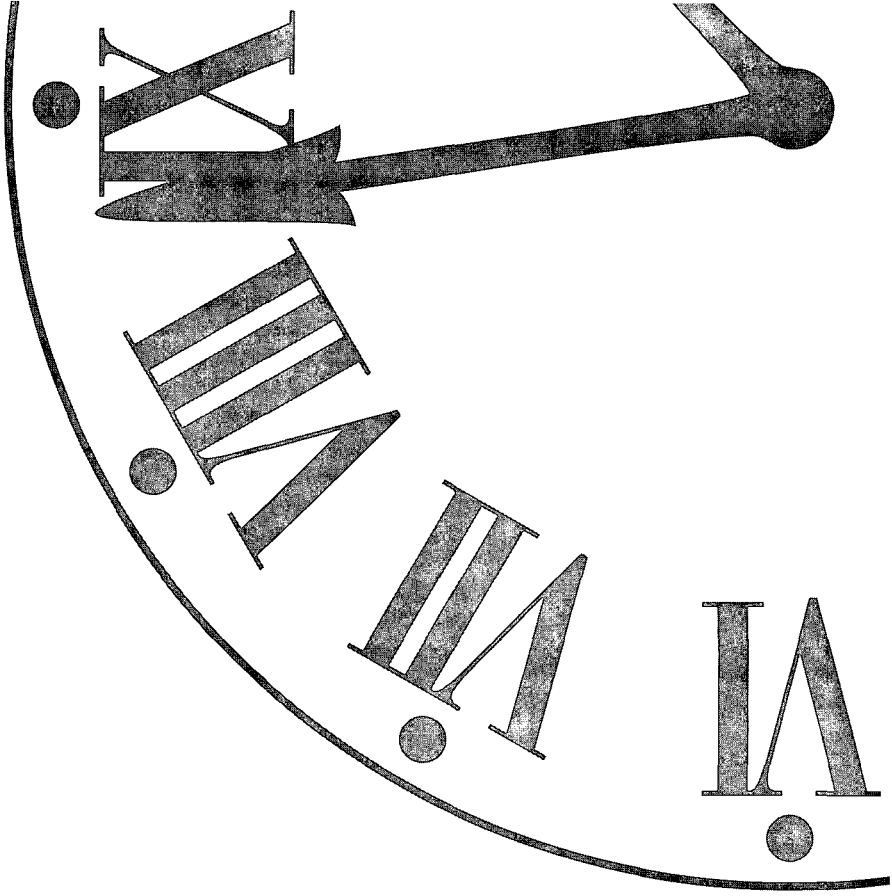

eign analyses, moreover, the issue of economic speed was political consolidation.

Western pressure for elections often ignores the dilemma that their timing raises as a result of the simultaneous revolutions and the more than normal consequence of victory in elections. Is it better to rush unprepared toward elections to try to unseat the former regime before it can legalize its informal control over property or to risk an interim government while preparing to win the next election decisively? Similarly with constitutions, how much compromise between the old and the new should one realistically accept either to achieve a new constitution and proceed with reform, as in the Bulgarian agony that tore the opposition apart in July 1991, or to continue to delay its enactment, as in all other countries?

Conflicts over electoral laws and dates are not just about political power. The sources of economic power and personal livelihood are being set for the long run, and whoever is in a position to make choices over the programs for privatizing factories, government services, and land, for assigning tax authority, choosing accounting rules, drawing boundaries of local and regional authorities, defining the scope of constitutional review and the principles of selecting judges, or writing the laws by which votes will be counted and elections held will have overwhelming influence over who gets what for a long time to come. In many cases they will set irreversible processes in motion.

The stakes of the political revolution also lead to a heightened sense of the significance of the moment, as one that could be lost forever. The most extreme case is that of Croatia, where the elected leaders' apparent disregard for the hundreds of Croat and Serb deaths is justified by their conviction that this is the one chance in a millenium (since the pact between Croat and Hungarian kings in the year 1000) to gain Croat independence. Yet impatience also rules Slovene nationalists, the Hungarian finance minister, and the Polish president, whether the goal is sovereign independence, currency convertibility, or electoral consolidation of political authority so necessary to market reform. And this knowledge of fateful decisions is hard on the art of compromise and need to agree on equal-regarding procedures.

Even if markets could develop without new rules or politically defined expectations, their creation in the short run causes political difficulties far greater and more complex than is captured in the prevailing view that the current task of these governments is to protect their legitimacy and maintain popular consensus for markets during the initial period of severe economic hardship. Moreover, it is the patience of Western powers and the world community, not that of their own citizens, that is most in doubt. The race is against an external timetable of good will and attention that could run out. The many requests of the governments of Eastern and Central Europe for economic assistance, foreign investment, and trade opportunities *now*, for example, are not refusals to accept that this aid must be earned. They are appeals for recognition of the political import of decisions that must be made and are being made now. They are warnings that even in more settled climes, such conditions favor demagogues. And they are requests for an advance commitment of the Western membership they seek, once they meet its tests, so that realistic expectations can guide peoples' economic decisions now and can reduce the fears and their political unpredictability. ■

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MICHAEL ALEXEEV, CLIFFORD GADDY, AND JIM LEITZEL

Getting the Picture Right

Soviet Collapse, Transition Troubles, and Western Aid

Western analysts, the news media, and the public at large seem to agree that the Soviet economy is on the verge of total ruin. The statistics appear overwhelming: GNP has declined 15 percent in 1991, inflation is reported to have reached three-digit levels, and this year's government budget deficit is close to 10 percent of GNP. From that evidence, to be sure, things look bad. "Things," however, aren't always what they seem. Our own judgment is that real economic conditions in Russia and other Soviet republics have not deteriorated badly this year or generally under perestroika. While the Soviet economy has never been particularly healthy, it is not in a state of imminent collapse.

Assessing the state of the Soviet economy is difficult. Many of the statistical measures that Westerners are accustomed to citing in relation to their own market economies—GNP, inflation rates—are nearly meaningless when applied in a traditional sense to an economy in the midst of a transition such as the one the Soviet economy is now undergoing. Moreover, most of what is visible on the surface in daily life in the Soviet Union reflects the most negative sides of the current economic situation. The positive sides are often hidden. Failure to take these hidden sides into account is not only skewing our picture of the current situation, but will also hamper our ability to interpret what lies ahead in the transition and to draw up sensible strategies for Western aid.

Spontaneous Privatization

What Americans see regularly on the nightly television news are the empty shelves and the long lines in the state stores. Those stores are indeed a depressing collection of glass cases that are either empty or filled with low-quality, barely recognizable "goods." But the shelves were empty before perestroika as well. The important news is that for a growing number of Soviet consumers today, the state stores are becoming less and less relevant. A burgeoning market economy is rising from the ashes of the state sector.

Part of this market sector has long been familiar as the Soviet underground economy. Even before the era of perestroika, millions of Soviets engaged in economic activity outside the state sector, supplementing their official incomes on average by as much as 25–30 percent in nonrecorded activities. Recently, however, a new twist, "spontaneous privatization," has crept into state enterprises. Spontaneous privatization has restored the profit motive for producers by permitting them to appropriate nominally state-owned assets for their own private ends. Managers and employees of a state-owned restaurant, for example, might simply begin providing meals at prices negotiated with their customers. The state distribution network provides most of the food, but the managers and employees, not the state, get most of the profit. Soviet economists call it "privatization of profits."

Spontaneous privatization has been fostered by the rise of the now legal cooperative and "small business" sector. Through various interlocking mechanisms that include the formation of cooperatives and the leasing of state-owned equipment, the ownership of collective assets is being effectively, if murkily, transferred to private citizens.

The Smell of Impropriety

Much of this diversion of state property may smack of impropriety, and in an ideal world there would be much room for criticism of such behavior. Yet, what else can individuals do when there is virtually no legal market to buy and sell productive assets? More important, though, is that relative to the alternative of the old centralized command methods, the Soviet economy benefits from this nascent private enterprise. Spontaneous privatization provides

Authors' note: The pace of political events has rendered much familiar terminology regarding the former USSR out of date. Our use of terms such as "Soviet Union" is for convenience and should be taken to refer to the present-day Russian Republic and any other republics that remain in close confederation with it.

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ILLUSTRATION BY VINT LAWRENCE

the semi-official owners, working for their own account, with strong incentives to provide the goods and services that Soviet consumers value highly. Perhaps the main flaw of the old Soviet economic system was not that it produced too few goods or even that it produced them with too much waste, but that it simply produced the wrong goods. There was no connection between production and consumption. Now, spontaneous privatization provides incentives not merely to work, but to work on the right things, the things people actually want and are willing to pay for.

Less Than Rosy

If the emerging private sector represents a widespread and generally positive development in the Soviet economy, why do most reports perpetuate the collapse scenario? There are a host of reasons, but perhaps most important is that the Soviet economy does have plenty of problems. The Soviet Union is a poor country relative to Western industrialized nations, with living standards as low as one-third of those in the United States. A full-scale market economy does not yet exist, particularly for productive assets like buildings and land. Key industries such as the energy sector, which are still largely state-controlled, are suffering as the state sector deteriorates. Rapid changes in the distribution of income fostered by the emergence of the market economy have harmed the relative position of many citizens, and some groups have also seen declining real incomes in absolute terms. Continued excessive state controls over prices, wages, and other aspects of economic life have channeled some entrepreneurial talent in directions that are not the most conducive to generating economic growth. Most serious are the political and nationalities crises, which by themselves could be enough to bring about chaos and civil war even in a more prosperous setting. Despite all these difficulties, though, widespread de facto marketization is keeping the Soviet economy afloat, and the overall economic picture has not significantly darkened. If anything, the task of policymakers at the central and republican levels now is to catch up with the spontaneous marketization already under way.

What is it that will allegedly make things so much worse during the period of transition?

Problems of Transition

Despite nearly six years of half measures, the Soviet Union has still not formally and officially instituted widescale market freedom and private ownership. Why the hesitation? One big reason is the fear of Soviet leaders that during the transition things will get worse before they get better. Such concerns about the consequences of market reform, however, are unwarranted. They stem from an exaggerated focus on the official sector of the Soviet economy and failure to understand the problems of mismeasurement.

What is it that will allegedly make things so much worse during the period of transition? The main suspects are the usual perils of market economies: inflation and unemployment. These economic pathologies are linked to the two fundamental changes required to convert the Soviet Union into a market economy: free prices and private ownership. The logic seems simple. If price controls are lifted, prices will quickly rise, producing runaway inflation or even hyperinflation. If state enterprises are turned over to private owners and subsidies cease, the result will be bankruptcies and mass unemployment.

While simple, the conclusion that the transition to capitalism will entail increasing inflation and unemployment is extremely misleading, if not wrong. First, consider inflation. Here, the misunderstanding concerns the relevant prices facing Soviet consumers before reform. The actual prices for goods are not simply the nominal state prices. In general, Soviet consumers are not guaranteed to be able to find goods at the nominal state price. This uncertainty in the supply of goods forces consumers to engage in extensive search, which is itself costly.

Nor is finding a good in the state store the end of the story. Soviet consumers, as is well known, often have to endure long queues to buy goods. Like searching for goods, waiting is an activity that is costly to shoppers. These large search and queuing costs represent additional payments that consumers must make to buy goods in the state sector, and they should be included when determining the actual prices facing shoppers.

What, then, are the real prices? Again, we recommend turning away from the apparent reality reflected in official markets and looking at what really happens in consumer markets in the Soviet economy. Virtually all goods that occasionally appear in state stores are currently available on free markets (only some of which are illegal "black" markets), though at prices that are generally higher than the nominal prices in the state stores. A Soviet consumer who wants to buy a particular item thus has to decide whether to purchase it in the controlled state sector or on the parallel free market. If it really were cheaper to buy in the state sector, when all the nonpecuniary costs of searching and queuing are taken into account, then no one would ever buy the good in the free market, or the free market price would fall. Since people do shop in both the state sector and the parallel markets, on average the free market price reflects the true costs of shopping in the state sector. In the free markets, these costs are paid in rubles (or foreign currency); in the state sector, the costs are borne partly in rubles and partly in time for searching and queuing.

What will happen to actual prices as price controls are lifted? The nominal prices in the state sector will by and large rise. Simultaneously, though, the costs of queuing and searching will nearly disappear. This implies that the *actual* costs of purchasing goods need not increase with market freedom. The official price rise in the state sector on April 2, 1991, when the government raised state-controlled prices more than 60 percent on average, bears out this contention. Free market prices did not rise when the nominal prices in the state sector were raised. Hence, the actual costs of acquiring goods did not rise, on average, even though the measured rate of inflation in the Soviet economy for April 1991 was very high.

Unemployment or Underemployment?

The unemployment scenario is similarly plagued by mismeasurement and a faulty understanding of current

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conditions. Although official unemployment has historically been quite low in the Soviet economy, actual unemployment, and especially underemployment, greatly exceed the official unemployment rate. The underemployed are workers who have jobs in the state sector, but jobs that would not pay for themselves under a regime of free prices and private ownership. Soviet firms hire these excess workers now because it makes sense to do so given the fixed prices in the economy, and because state-owned firms are not primarily interested in maximizing profits. With private ownership and free prices, profit-maximizing firms will eliminate these jobs, since the true costs of such workers exceed the real value of the goods they produce.

Excess workers are already de facto unemployed, though in a disguised fashion. Their paychecks, given in exchange for labor that is not valuable in the production of goods, are economically equivalent to unemployment checks. As market reforms begin to be introduced, the disguises will come off, and excess laborers will lose their jobs. *Measured* unemployment, though not *actual* unemployment, will then rise.

Won't society be overwhelmed by the need to support the newly unemployed? From a strict accounting standpoint, the answer is "no—at least no more than in the past." At a minimum, the government can afford to pay these workers unemployment benefits equivalent to their pay when they had jobs. Since the government was previously paying these workers, who were producing nothing of net value to the economy, it can continue to do so. This is not to suggest that for the individuals involved the psychological difficulties in converting from disguised to open unemployment are unimportant. Nor can we rule out the possibility that the transition to the market may be accompanied by a recession that raises actual unemployment. Recessions do occur in market economies. The point is simply that the direct employment effects of transition need not be destructive. In fact, they may even be beneficial. The closing of factories that make goods that are worth less than the inputs used to produce them is a benefit, not a cost, to the Soviet economy.

To sum up, the increases in inflation and unemployment that are feared to follow reform are artifacts of how prices and employment are currently mismeasured. Prices are already high in the Soviet Union, and the number of virtually unemployed workers is also quite high. These conditions reflect the legacy of more than 60 years of misallocating resources. Market-oriented reform is not the cause of inflation and unemployment, even though the measured rates of inflation and unemployment will increase during the transition. Greatly increasing the scope of free markets and free enterprise represents the best hope for substantially improving the well-being of Soviet citizens. There is little to suggest that the transition to a Western-style market economy need be, on average, any more painful than the conditions in the current, unreformed economy.

An Explicit Welfare System

The qualifying term "on average" is important. There will undoubtedly be big changes in income distribution as a result of the market reforms, and it is often perceived that these changes (assumed to be in the direction of greater inequality) will provoke popular discontent. However, it would be wrong to exaggerate the distribution effects. As far as the middle- and higher-income groups in Soviet society are concerned, it is likely that whatever income distribution emerges from market reforms will have the redeeming feature that it will be determined by people's ability to act in the real economy, not by their ability to rise in the bureaucracy.

Some low-income groups will no doubt suffer true hardship. The solution, however, is not to slow down the market reforms, but to revamp the Soviet welfare system. The current system is largely implicit, working through low fixed prices in state stores and the policy of full employment. It will need to be replaced with an explicit system of unemployment and welfare benefits.

Western Aid

This account of the Soviet welfare system and how it needs to be reformed suggests a useful principle to keep in mind when thinking about possible Western assistance to the Soviet Union. Economists make an important distinction between *private goods*, such as cars, housing, food, and refrigerators, and *public goods*, such as national defense, welfare and unemployment benefits, education, and transportation infrastructure. It is clear that as the Soviet economy reforms, one of the natural and necessary changes that will occur is that the state will relinquish responsibility for the production of private goods to the private sector. At the same time, however, the state has a continuing role to play in the provision of public goods. We suggest, therefore, that a sensible strategy for Western aid to the Soviet Union or its former republics would be to concentrate on promoting private provision of private goods and continued (or improved) state provision of public goods.

Aid to private economic agents is difficult to implement in an official aid program. Such aid is probably best left to private economic agents in the West, in the form of undertaking profitable ventures within the Soviet Union and possibly with private Soviet partners. Trying to channel such aid through the Soviet state sector carries with it the risk of inadvertently fostering continued state interference in economic affairs best left to private actors. Official Western aid should therefore focus on helping the Soviet state sector provide public goods that promote and protect private market activity.

The Soviet Union already has many elements of a market economy. Transition to a full-fledged market economy will not be easy, but it need not be prohibitively costly, even as official statistics paint a worsening picture. By assisting the Soviet or republican governments in providing the public goods that smooth private activity, such as transportation infrastructure, communications networks, taxation, banking and legal systems, education, and social welfare programs, Western countries will indirectly nurture the nascent Soviet market economy. Such Western aid is relatively low cost, but potentially extremely beneficial in establishing a market economy in the former Soviet Union. ■

The main suspects are the usual perils of market economies: inflation and unemployment.

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CATHERINE McARDLE KELLEHER

THE NEW GERMANY

UNIFICATION ONE YEAR ON

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When Germany was reborn on October 3, 1990, most in the West believed, and some feared, that unification would lead almost immediately to a super West Germany. Today, however, a united Germany is self-absorbed and largely focused on domestic priorities. It is preoccupied with the burdens of integrating, both economically and socially, the five new states created out of the former East Germany. It faces, too, a reorientation of political life eastward toward the new capital, Berlin. Prosperity for all, true civic equality, and political balance are goals that are promised, but not yet attained.

Government officials not surprisingly tend to stress the optimistic long-term outlook for a Germany now 80 million strong and the third largest market in the world. The unexpectedly strong performance of the West German economy over the past year, they argue, means that Germany is able to afford whatever it will cost to unify and to maintain its role as one of the world's largest export nations. Ordinary citizens and opposition leaders focus rather on the overwhelming and often unforeseen burdens of the uncertain present, the problems of allocating jobs and housing, of higher taxes, and of mandating social justice. Analysts both in Germany and abroad tend toward the middle. They agree on the favorable longer-term prospects but are fully cognizant of all the short-run risks. An inward-looking Germany means less German strength for building European union or aiding a fragmenting Soviet Union. And the strains in the German social fabric are acute—as shown by the ability of small right-wing groups and rowdies to mount more than 200 attacks in recent weeks on foreign residents and asylum seekers.

One year after formal union is far too early to assess definitively the progress and problems of unification. Germany's security arrangements, economy, and domestic politics are evolving rapidly, within a European and an Atlantic framework that are themselves in flux. But the dimensions of longer-term national policy are already becoming apparent, allowing a more objective calculation of the implications and costs of German unification.

Unification and Security

Assessing the progress of a united Germany in the past year is perhaps easiest in the area of security arrangements. In large measure, this reflects the centrality of American and Soviet interests to the unification process. From the first discussion of unification in December 1989, the American condition for German unity was German membership and forces in NATO. The East German forces, the National People's Army (NVA), were to give way to a unified *Bundeswehr* with a ceiling of 370,000 men by the end of 1994. Soviet requirements varied but eventually translated to two by July 1990: assurance of a gradual withdrawal of Soviet forces from East German territory and implementation of a host of German undertakings that recognized particular Soviet security interests and that eased the special social and economic burdens of relocating Soviet forces. The new Germany was to recommit to earlier pledges not to produce weapons of mass destruction and not to violate existing state borders. Moreover, East German territory was to be a denuclearized zone within NATO and would see assignment only of *Bundeswehr* soldiers under national

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command until at least the last Soviet withdrawals by the end of 1994.

On July 1, 1991, *Bundeswehr* administrative districts began operating in each of the five new states. West German officers took over most command functions, with only companies and half the battalions headed by former NVA officers. Day-to-day restructuring has reflected many of the general problems in German unification. Most of the East German facilities are of a quality well below those of the *Bundeswehr*. West German professionals have found adjustment hard, and few West German conscripts have been assigned to duty in the East. East German soldiers, as all East German employees, are paid less well than their West German counterparts and reportedly feel marginalized. Returning the many NVA facilities to civil purposes is also proving difficult. Most new state and local authorities are desperate for the buildings but lack funds to convert or rebuild on any scale.

German efforts to meet Soviet security requirements have also absorbed substantial effort. Perhaps the most pressing task has been German stewardship over the withdrawal of Soviet forces—approximately 350,000 soldiers and 200,000 family members on October 3, 1990. Germany has pledged DM15 million ($8.8 million) to cover relocation costs, and German police provide security for Soviet personnel and facilities. By the end of 1991, some 100,000 soldiers and their equipment and 50,000 civilians will have been withdrawn.

Of grave concern to both Soviets and Germans has been the morale of Soviet forces, who are thought to be increasingly restive and isolated. As conditions worsened in the Soviet Union, and even during the August coup, many foresaw great risk of Soviet defections. These fears have been largely groundless; more troublesome perhaps are the scattered altercations and attacks involving German right-wing elements against Soviet soldiers and installations.

GERMANY CLEARLY IS THE HOLDER OF THE POLITICAL BALANCE; ITS POTENTIAL AS A BROKER IN THE INTEREST OF EUROPE, THE ATLANTIC COMMUNITY, THE SOVIET UNION, AND ITSELF SEEMS ENORMOUS.

Unification and the Western Alliance

Time and time again throughout 1990 Chancellor Helmut Kohl and Foreign Minister Hans Dietrich Genscher asserted the need to consider Soviet security interests in all Western efforts to restructure the European order. They argued that it was in the interest of Western security to provide direct economic aid and to open channels of communication that promoted Soviet forces favoring internal reform and seeking peaceful engagement in Europe. Bonn acted decisively in the winter months to ship food to the Soviet Union. The government also repeatedly confronted American and British critics who opposed granting aid before Soviet market reform was seriously under way.

Throughout 1991 German pressure on these points has been intense—in NATO but also within the European Community, the Western European Union, and most recently the Group of Seven. In the wake of the failed Soviet coup in August, Kohl argued that the lack of Western response was one of the precipitating factors and argued for even broader efforts. The splintering of union-republic ties, the post-coup paralysis over radical economic reform, and the general eco-

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nomic chaos, however, have given all Western capitals, including Bonn, pause about how and when to provide effective economic assistance. Bonn is now quite pessimistic but continues to push for joint Western action. Germany is now pledging some DM90 billion ($55 billion) to the Soviet Union and Eastern Europe.

Germany successfully pressed several of its own longstanding positions in NATO deliberations on a post-cold war strategic concept and on restructuring NATO forces. Under pressure of the German unification schedule, NATO's London Declaration on July 6, 1990, heralded NATO's adaptation to a more cooperative relationship with the Soviet Union. NATO's formal Strategy Review and its Force Restructuring Program have now gone still further, shifting away from confrontation and the doctrines of flexible response and nuclear deterrence to a new posture of reassurance and stability. The Bush arms control initiative of September 27 and the Gorbachev response signal the end of ground-based nuclear weapons stationed in Europe.

Moreover, NATO doctrine no longer names an enemy. The Warsaw Pact is dead, and all Eastern European targets have been formally removed from NATO's target base. Soviet targets remain, as they do in the American target plan, but NATO descriptions now emphasize "residual" risks and "potential" capabilities.

The Force Restructuring Program aims to assure the political acceptability of allied forces on German soil before and after Soviet withdrawal in 1994. NATO's forces are to be transformed into a small rapid reaction corps and smaller, more mobile, main forces, with national elements serving within a multinational framework and under a still integrated command structure. NATO's goals are to implement transparency and "reciprocity"—in the view of many Germans, the twin keys to the evolution of more cooperative relations with the East.

The Kohl government has declared NATO and the American connection to be indispensable elements of a European security framework. The level of German commitment was dramatically emphasized in the recent plan by Genscher and U.S. Secretary of State James Baker to provide security reassurance to the new democracies of Eastern Europe by in essence granting them a form of NATO associate status. But the Kohl government has also consistently described its goals as a European Germany, not a German-dominated Europe, and has taken pains to balance its Atlantic and European commitments and to press for the evolution of a European security identity within the European Community. Over the past year, Germany and France have made several proposals to revive the Western European Union to act as the security "agent" of the Community until political union is reached, and to reshape the largely ceremonial Franco-German brigade into what could become the central element of an eventual European rapid reaction corps for use outside Europe.

For the moment, Kohl's policy toward the future architecture of European security is publicly in a holding position, awaiting the outcome of the Rome NATO Summit in November and the European Community Summit on Political Union in December. The Paris-Bonn WEU initiatives, especially the proposal for a Franco-German corps, face a disapproving coalition of the United Kingdom, Holland, and Italy, as well as some American decisionmakers concerned to protect their own role and NATO's mandate. NATO restructuring continues apace but with less certainty given post-coup political and military worries about military disintegration in the Soviet Union. But whatever security framework finally emerges, Germany clearly is the holder of the political balance; its potential as a broker in the interest of Europe, the Atlantic Community, the Soviet Union, and itself seems enormous.

The Domestic German Security Debate

Unification has added new dimensions to the ongoing German debate on the future role of German armed forces. Although now undercut by changing political conditions and a general European trend toward demobilization, the push by Kohl and the Bush administration in 1990 for a 370,000-man *Bundeswehr* represented perhaps the highest force ceiling talked about in Bonn. Genscher reportedly favored 300,000, and the opposition Social Democrats discussed goals as low as 250,000, as did the Soviet Union. Resurfacing from the past were more radical plans such as withdrawing all foreign forces from German territory in roughly the same time frame foreseen for Soviet withdrawals. Most of these proposals, however, were lost in the welter of daily details involved in the substance and process of unification. And in 1990, the year of the first all-German elections, all parties were reluctant to introduce such divisive issues into the campaign, in the interest of stability and legitimacy.

At issue now is a more fundamental question: what kind of international role will a unified Germany play in world affairs? Spokesmen from President Bush to United Nations Secretary General Perez de Cuellar have called on Bonn to take more direct responsibility, to use not just its financial resources but its political and military capabilities in the interests of global security. There have been repeated suggestions that Germany, along with Japan, be added to a reformed, restructured UN Security Council. Until the crisis in Yugoslavia, these questions rarely surfaced in German public arenas. The largely negative German public debate on the Persian Gulf war, for example, brought renewed interest in restricting German participation to multilateral actions sanctioned by the United Nations (for example, for peacekeeping "Blue Helmet" missions) or preferably in nonmilitary roles. In contrast, the escalating civil war in Yugoslavia has brought greater public support for an active German diplomatic and military role, perhaps even in a European interventionary force. But there is broad agreement that the boundaries for a greater German role are in Europe and within the Community, and that legitimate goals for German action are peaceful change, the preservation of human rights, and political stability wherever possible.

To the disappointment of many, the collapse of East-West confrontation and unification have not yet

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brought a "peace dividend." Initially, the Kohl government announced a 16 percent reduction in military spending for 1991, to be followed by an additional cut of DM1.5 billion ($880 million), or 3 percent, in each of the next three years. In July, however, the cabinet set the 1992 budget back to DM52.5 billion ($30.8 billion), virtually unchanged from 1991, in order to absorb the costs of "infrastructure problems in the eastern part of the Federal Republic." And it is not yet clear when there will be future reductions.

Economic Integration

Economic issues clearly dominate the short-run agenda of unification for individuals and political leaders alike. Almost from the outset, Chancellor Kohl himself set economic prosperity and equal living standards as the benchmark of unification success, perhaps to be accomplished in as little as five to ten years. More basically, Germans in both the West and the East have long measured their own status in economic terms and assessed the success of their respective regimes in terms of economic achievements.

Economic policy touches the fundamental internal fears, frustrations, and hostilities about unification. East Germans fear unemployment, the loss of occupational identity, an inability not only to advance but even to hold on to what they had so painfully achieved in the postwar years. German economic and monetary union meant the swift collapse of the East German economy. East Germans face fewer jobs and higher prices, more expensive rents and fewer social services, greater economic competition and fewer outlets for their goods.

West Germans, on the other hand, feel burdened with both the tasks and the costs of change, neither of which they can refuse. It is not just the new higher taxes (Kohl's "tax lie"), the reallocation of public programs and attention, the threat to overall economic growth, and the shrinking of government subsidy. It is the injection of disorder and change into what had been a settled national economic agenda. It is the incessant demands of those East Germans who came westward to seek opportunity and the uncomfortable passivity of many of those left behind.

Pessimism is amply justified from a short-term perspective. Unemployment in what was East Germany has now passed the one million mark; two million more workers are minimally employed, in job training schemes, or with direct employment support. By the end of 1991 the combined figure may reach 3.5 million. Some estimates are that employment will fall to about half the 9.9 million level of 1989, perhaps bottoming out at the end of 1992 or the beginning of 1993. Female workers and those over age 50 will be the hardest hit.

Other statistics for 1991 paint a similar picture. Eastern Germany has 20 percent of Germany's total population, but only 8 percent of total GDP. It has a per capita GDP only one-third of West Germany's. The industrial sector has been hardest hit by closures; contrary to earlier estimates, only 20–30 percent of the existing East German industrial plant will survive, and there will clearly be ragged sectoral growth. Net migration west since the summer of 1989 totals more than one-half million and continues; approximately 450,000 workers commute daily to West Germany. Reportedly, the German Finance Ministry currently estimates that East Germany will receive DM420 billion ($246.6 billion) in state support from 1990 to 1995. For 1991 the total public sector debt will be approximately DM200 billion ($117 billion).

West Germans are worried not only about the size of these sums but also about how long it will be necessary to provide them. Many experts believe that current levels of support, although painful and unavoidable, will be tolerable in the short run. Their assumption is that growth in East Germany will pick up and real GNP will grow an average of 10 percent in the East and 3 percent in the West between now and 1995 (the estimates for 1992 are just over 8 percent and 2 percent). But many uncertainties could attenuate the process of economic reconstruction and slow overall growth. For the foreseeable future, Germany will remain divided economically. A cautionary forecast recently published by the five leading German economics institutes warns of a growing conflict between rising pressures on wages in both the East and the West, the failure to restrain public spending outside the East, and the rigid monetary policy imposed by the *Bundesbank*. Although some analysts and some recent wage settlements suggest parity in wages in the East and West by 1994, a huge gap in productivity still exists.

Talk of economic reconstruction by the end of the 1990s has had a nice electoral ring, but most independent analysts and officials in private estimate that it will take decades. Much of the direct economic burden has yet to be felt given the decision to postpone major cuts in public spending and to rely on deficit financing for these initial months.

Gloomy statistics and projections, however, reflect only part of the story. Although pent-up East German demand constitutes a one-time factor, the German economy overall showed relative growth and export vitality in 1990 and in 1991. Moreover, from the moment the Berlin Wall came down, economic policy has been about political, not technical economic, choices. The timing of German economic and monetary union, the choice of the currency conversion rates, the scope and pace of the economic unity treaty—all represented fundamental political calculations or bargains struck by the Kohl government. Implementing unification has itself highlighted the effects of several basic political processes at play, processes that may in the end be more important for future policy outcomes and political choices than the specifics of employment or currency adjustment.

First and most dramatic are the classic effects of a continuing sense of relative economic deprivation in both East and West. West Germans have yet to face significant real cuts in their standard of living. But they believe that unification has cost them a future that might have been. And they also measure the present by the past, by their memories (now burnished and distorted) of what they suffered and achieved to create their own economic miracle after World War II and what East Germans now seem to demand as an automatic right.

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The East German sense of deprivation is more pervasive and probably long-lasting. Initially, East Germans satisfied some of their needs with the rich array of West German consumer goods. But soon a sense of general deprivation deepened into a feeling of a loss of individual and group economic security, of growing personal risk and the withdrawal of much of their guaranteed social safety net. The obvious losses were day care centers, work-related recreational opportunities, or housing guarantees. More telling were the changes in personal relations, the competition with fellow workers for the remaining jobs, the new commuting marriages, the tensions from layoffs in two-worker families, the search for affordable arrangements for aging relatives or single-parent families.

The lowering of public and popular expectations has been politically traumatic. To be sure, the transition to capitalism was expected to result in a period marked by some unemployment. But Germans, both in the East and in the West, believed that the economic transformation could be handled quickly and affordably.

Popular expectations were too high initially for several reasons. Available economic data about East Germany were inadequate; there were no models for such a total economic transformation. Chancellor Kohl painted too rosy an economic picture in his campaign for the all-German elections. The opposition Social Democrats were fumbling in their efforts to present an alternative program. The *Bundesbank* did not credibly renew its initial opposition to Kohl's overly optimistic program. In the dizzying rush of events, the electorate in both East and West clung to the talisman of the successful postwar economic reconstruction of West Germany. The legend of the *Wirtschaftswunder* seemingly blinded most Germans to what, in hindsight at least, should have been economic common sense: that the integration of East Germany into West Germany's social market economy would be very painful. But having encouraged unrealistic popular expectations, Germany's leaders are now discovering the political consequences.

EAST GERMANS FEAR UNEMPLOYMENT, THE LOSS OF OCCUPATIONAL IDENTITY, AN INABILITY NOT ONLY TO ADVANCE BUT EVEN TO HOLD ON TO WHAT THEY HAD SO PAINFULLY ACHIEVED IN THE POSTWAR YEARS.

New Politics in the New Germany

The German political agenda now seems overwhelming. After 40 years of communist rule, East Germans differ in fundamental ways from their fellow citizens in West Germany. Their life styles remain centered far more on home, job, and locality; their expectations and consumption patterns reflect a different time scale and style of economic behavior.

Fairly immediate answers must be found to three pressing questions. First, how to devise policies that will be acceptable to people whose socioeconomic values are not just different, but at points in conflict. Second, how to devise standards of equity for the treatment of fellow citizens at very different levels of economic activity and productivity. And third, how to assure against new cleavages in societies that have only begun to grow together.

In 1991, having won the election in December 1990, the Kohl government found assuming responsibility for these tasks to be the recipe for political disaster.

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In the spring, Kohl's Christian Democrats suffered reverses in three straight *Landtag* election campaigns, including one in Kohl's home state of Rhineland-Palatinate. These state-level campaigns are considered a barometer of broader party standing in Germany, and the CDU losses were taken as a signal of West German uneasiness with government policies on unification. In East Germany, dissatisfaction with the government has been reflected in public opinion polls rather than elections. From its election high of 41.8 percent, CDU popularity in the East has now dropped to 37 percent, 3 points below the SPD.

Developments in Party Politics

One result of the disparities between East and West in the newly unified Germany may be a weakening of traditional party loyalties because of heightened attention to regional or state interest. At minimum, East-West wings may emerge within parties. More extreme effects might include new, regionally based parties or a realignment of party identification along "have/have not" lines.

Certainly the existing parties are having their troubles. In an interview with *Der Spiegel*, Volker Rühe, the general secretary of the Christian Democrats, referred to the "catastrophic condition" of his party. It is conceivable that by the end of 1994, by which time new elections must be held in the five states of the East, the Christian Democrats could lose their majorities in all but three states of the conservative and Catholic South. But the situation for the opposition Social Democrats is not much better. Their major problem remains the inability of the leadership to unify the party, which, throughout the 1980s, proved itself fractious and generally at sea. As one measure of its capacity for division, at the party congress last May the vote on whether to move the seat of government from Bonn to Berlin was 203–202 (to stay).

Intra-party relations may be increasingly influenced by regional concerns. The Christian Democrats are already showing signs of this trend, with state party organizations blaming their poor electoral showings in 1991 on the government in Bonn. If the economies in the Eastern states now controlled by the CDU do not improve over the next three years, CDU politicians in power there will surely attempt to distance themselves from Kohl. National party organizations thus will have to be more sensitive to the interests of their counterparts in the states.

UNIFICATION FORCES THE EAST GERMANS TO DEAL OPENLY WITH THEIR HISTORY, BOTH THEIR NAZI PAST AND THEIR COMMUNIST LEGACY. EVEN AT THE PRACTICAL LEVEL, HISTORY CANNOT BE AVOIDED.

Unresolved Issues

The unification process has raised anew difficult questions of national identity and history. Who are the Germans? What is their Fatherland? What is the relation between the German cultural and linguistic communities and the creation of states that express that community or govern Germans? To what part of Europe do the Germans belong?

For much of the past 40 years such questions have simply been set aside by the reality of division. West Germany first forged its sense of identity through economic achievement. To this was progressively added pride in the strength of democracy, the fulfillment of

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constitutionalism and the rule of law, the humanitarian outreach on the basis of universal human rights to Eastern Europe and to the Third World. For East Germans, group esteem and state adherence, if not civic loyalty, came from pride in their economic achievements, from their sense that the promises of socialism would be realized through German industry and resourcefulness.

At every point in the past year, East and West Germans have acknowledged their common "Germanness" and the inevitability of the unification process in which they are involved. What they feel in almost every aspect, however, is difference. The disparities in their perspectives on their experiences over the past year have inhibited the development of a feeling of common purpose that would make it easier to get through the tasks at hand.

Their lack of a common identity has also been complicated by the different way in which the people of East and West Germany came to terms with National Socialism and its crimes. In the West, the Nuremberg trials and 40 years of painful, open debate allowed the people to come to grips with their recent past. In the East the Soviets saw to it that the people did not debate their past openly. Instead, they were simply inculcated according to the socialist catechism—the Nazis had not victimized Jews, but communist martyrs—and declared free of guilt or history.

Unification forces the East Germans to deal openly with their history, both their Nazi past and their communist legacy. Even at the practical level, history cannot be avoided. For example, when state-owned property is privatized in East Germany, it must be decided not just how former owners will be compensated but whether the Nazi or communist regimes were liable for the seizure. Given the depth and breadth of the communist network, it is uncertain whether a replay of Nuremberg is either possible or desirable. But there must be some coming to terms with the crimes not only of citizens against citizens but of the upper and middle level of leadership as well.

The recent outbreak of racist and right-wing politics in both East and West Germany constitutes a special historical test. The major danger lies not in the hideous pattern of violent attacks against "others" or even in the limited electoral success the neo-Nazis have once again achieved. It lies rather in the seeming inability of the major parties to move swiftly and effectively both to condemn unambiguously these actions and to provide a far-reaching program to overcome these trends and provide legitimate solutions.

German Concepts of International Power

Until the most pressing disparities between East and West are met, Germany will remain rather inward-looking. Unless the most pessimistic forecasts are correct, however, many of the most arduous challenges of unification will be met within the decade. Then the question will be how the united Germany will wield the power it possesses.

History will provide one limit on German power. For Germans, this means being aware of how the united Germanies of the past grew expansionary and being wary not to let a democratic united Germany move down the same path. Germany's neighbors will scrutinize German policies as never before for proof that a unified German state can be trusted to limit its geopolitical aspirations. In the Yugoslavian crisis, for example, even minimal German support for the independence aspirations of Croatia and Slovenia provoked European charges of German influence-seeking and Serbian references to a return to the politics of 1914.

Agreements reached between the two Germanies and the United States, Britain, France, and the Soviet Union before unification reaffirmed present German borders, limited the size of the German military, and restricted the military use of East Germany by NATO forces. Both as a signatory of the Nuclear Nonproliferation Treaty and under its unification pledges, a united Germany is most unlikely to seek nuclear weapons. But even if German public opinion were to change and the nation were to forgo its binding commitments, German power would still be inhibited.

The ultimate limit on German power is economic. As Jean Monnet and the framers of European unity hoped, the German economy, its industry and monetary system, is closely tied to that of the rest of the European Community. At the least, Germany would be highly sensitive to unified European economic sanctions to protest an unacceptable demonstration of German power. In fact, because German economic might is export driven, Germany is unusually vulnerable to a cutoff of its trade.

A New World Model

One of the most striking developments over the past decade has been how both Germanies came to shape new concepts of power, not only in their own behavior but also in their relations with their superpower allies. West Germany, in particular, gave the world two forceful advocates of a new international style. Helmut Schmidt condemned the failed legacies of power politics in favor of economic achievement and successful democratic socioeconomic policies as the basis for international standing. And Hans Dietrich Genscher has molded the image of Germany as a major actor unable and unwilling to act alone except in the service of universally accepted principles and common security concepts.

West Germany was originally established with foreign democracies as its model. Its relations with other states were shaped by its participation in the West's multilateral organizations. Once all the tasks associated with unification are accomplished, the new Germany may well provide a model for a new approach to international relations. Its commitment to cooperative security, to seeking positive peaceful outcomes and multilateral approaches to both peacemaking and peacekeeping may well exemplify the new style of politics among the industrialized North, if not throughout the world. But the lessons of unification one year on are both that domestic needs will come first and that a unified Germany, despite the preferences of the majority of its citizens, will never be Switzerland. ■

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Oregon's Plan for Health Care Rationing

Joshua M. Wiener

As U.S. policymakers wrestle with the twin problems of exploding health care costs and growing numbers of Americans who have no health insurance, the state of Oregon is poised to put into place a plan that will provide health care to virtually all state residents. Although the plan is controversial in several respects, the most revolutionary part of the package is Oregon's solution to the increasingly severe problem of providing medical care to the poor. The state will guarantee care to all Oregonians below the poverty line, but at a price: the explicit and public rationing of their medical care.

Because the Oregon plan makes fundamental changes in the medicaid program, the joint federal-state health care program for the poor, the state cannot implement it until the U.S. Department of Health and Human Services approves a demonstration waiver of existing federal requirements. When Oregon filed the request for the waiver last August, the often-heated debate over the plan moved from Oregon to Washington. At the heart of that debate, which features an unusual mix of staunch liberals and equally staunch conservatives on both sides, are two questions. First, can health care costs can be controlled only by rationing—by withholding medically beneficial services? Second, although Oregon's effort to provide health care to the uninsured is commendable, is the plan that it has devised a good one?

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What Does Oregon Propose?

The debate over how to restructure health care in Oregon began during 1987 when state lawmakers decided to eliminate medicaid funding for organ transplants and increase coverage for pregnant women instead. The highly publicized death from leukemia of seven-year-old Coby Howard, who might have lived had he received a no-longer-covered bone marrow transplant, forced an emotional and difficult debate. According to John Kitzhaber, state senate president and the intellectual father of the Oregon proposal, the main policy question was "what was the equity in giving sophisticated and costly services to a few Oregonians covered under medicaid before providing basic health care services to other needy citizens, including the working poor, who lacked any public or private coverage?"

From the ferment that the transplant decision created, the Oregon health care plan emerged with passage of several bills in 1989. Under the new law, everyone in Oregon would eventually have health insurance, either privately or through medicaid. To control costs, however, services deemed less essential (including some now covered by medicaid) would be excluded.

The new plan would extend medicaid coverage to all Oregonians with income below the federal poverty line. Currently, poor families in Oregon are eligible for medicaid only if their incomes are lower than 50 percent of the poverty line (except for pregnant women and young children), and childless families and individuals are generally excluded.

Starting in 1995, most employers will have to provide a health insurance benefit package equal to or greater than the one supplied to medicaid beneficiaries. And, finally, an insurance pool will be available for "medically uninsurables," who do not qualify for medicaid and cannot obtain health insurance because of pre-existing medical conditions.

At the heart of the Oregon plan is a priority ranking system for medical conditions and treatment, which will be used to establish a minimum benefit package. Public and private health expenditures are to be controlled by restricting the number of conditions and treatments, not the number of people, covered. In the favorite phrase of the plan's proponents, services, not people, will be rationed. Although the rationing could eventually extend to private insurers who provide minimum coverage to workers, it will initially apply only to medicaid. At first the rationing will not apply to elderly and disabled medicaid patients, although they will be included in the future.

Creating the priority system became the job of the governor-appointed Oregon Health Services Commission, which adopted a four-step process. First, they collapsed more than 10,000 diagnoses and an even larger number of treatments into 709 condition-treatment pairs—for example, appendicitis/appendectomy. Second, they developed and rank ordered according to social importance 17 general categories of conditions and treatments (see table 1). Third, they placed each of the 709 condition-treatment pairs into one of the 17 categories and then used a formula to

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Bold Initiative or Terrible Mistake?

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rank order them within category by the impact on quality of life and clinical effectiveness of treatments. Finally, commissioners moved certain condition-treatment pairs up and down the list "by hand" when they felt that they were improperly ranked.

Last May the commissioners submitted the priority list to the state legislature, whose task was to decide, through its appropriation process, how far down the list services could be funded. By law, the legislature cannot alter the commission's list and must fund condition-treatment pairs in order.

In July the lawmakers appropriated funds to cover services through number 587 on the priority list. Condition-treatment pairs ranked 588 through 709 are not included in the basic medical plan. This funding level covers virtually all services (98 percent) that the Oregon Health Services Commission labeled as "essential to basic care," most services (82 percent) considered to be "very important," and a few services (7 percent) deemed to be "valuable to individuals but of minimal gain or high cost." Not all of the high-priority pairs were covered because of the changes in their rank made by the commissioners. Among the uncovered condition-treatment pairs are chronic bronchitis, surgery for low-back pain, treatment (beyond comfort care) for extremely premature babies, and transplants for alcoholic cirrhosis of the liver. If spending exceeds appropriated funds, the legislature must either appropriate more money or cover fewer condition-treatment pairs.

To encourage health care providers to participate in the plan, the law grants them protection against malpractice suits, professional disciplinary action, or criminal prosecution when they do not provide services that the legislature has chosen not to fund. The law also guarantees "reasonable rates" to medicaid providers.

Looking Squarely at Reality

Advocates of the Oregon plan emphasize the major advantage it has over the current system: it brings uninsured Americans into the health care system. It is a continuing national scandal that 15 percent of the people in this country have no health insurance whatsoever and must either pay sometimes very high out-of-pocket costs for health care or rely on the charity of hospitals and physicians. As a result, uninsured people in poor or fair health visit physicians only half as often as do their insured counterparts. Once they do seek care, several recent studies suggest, they receive fewer services.

Given the sorry state of the uninsured, public officials from Oregon bridle at the idea that they are *introducing* rationing into the system. "Oregon and every other state rations already. We do it in a dumb way," retorts Mark Gibson, an aide to Kitzhaber, "and many people die, silently." Moreover, states have responded to increasing medicaid budget pressures by cutting payments to providers so radically that many, especially physicians, no longer treat medicaid patients. States have also lowered financial eligibility standards for groups not explicitly mandated by federal law (in Alabama a family of two is not eligible for medicaid if it earns more than $87 a month) and set arbitrary limits on the number of covered hospital days, physician visits, and prescriptions. This is rationing, Oregon supporters contend, as much as anything they propose.

Advocates of the Oregon plan emphasize the major advantage it has over the current system: it brings uninsured Americans into the health care system.

The Oregon plan directly confronts the reality that the United States is not going to provide every conceivable medical service to everyone, especially through its public programs. There is little doubt that one way other countries control health care costs is by limiting the availability of high-technology services. In the late 1980s the United States had more than twice as many open heart surgery units per million people as Canada and nearly five times as many as West Germany; it had four times as many magnetic resonance imagers per million people as West Germany and seven times as many as Canada.

Although supporters of the Oregon plan argue that what it proposes is just a different—and better—form of the rationing that is already being done in the United States, the ferocity of the opposition it has generated suggests otherwise. What Oregon proposes is qualitatively different because it explicitly condones the withholding of care, a practice widely viewed in the United States as unacceptable. In our current system, a physician or hospital that accepts a patient, even one who is uninsured, for treatment is morally and legally bound to provide medically necessary care. The reimbursement and service decisions are at least somewhat separated. In the Oregon proposal, they are joined together, and the law sanctions not providing some medically beneficial services.

Oregon has also made its decisions in a relatively open process with a fair amount of public comment. By making the rationing decisions explicit rather than implicit, they have made public officials directly accountable for their choices. Jean Thorne, the Oregon medicaid director, argues that in the current system, "Our decisions (to ration health care) have been made through a process where we, as society, hide and deny ever having made them . . . , through a process where we merely ignore the faceless and nameless in our society who do not have access to basic care."

The Oregon Health Services Commission used three formats to solicit public comment: a series of 11 public hearings, 47 community meetings, and a statewide telephone survey of 1,000 Oregonians regarding the issue of quality of life. In addition, there was the normal public debate about how the legislature should allocate the state's funds.

Oregon officials deserve credit for encouraging public involvement far beyond what is typical in most public policy decisions. Moreover, although it may be difficult to trace, Michael Garland of Oregon Health Decisions, a bioethical advocacy group, insists that public comment directly affected the ultimate rankings. On the other hand, there is also little doubt that the public debate was dominated by health care professionals and that the people most likely to be affected—medicaid beneficiaries, minorities, and the working poor—were substantially underrepresented.

Ethical Questions

Although the Oregon plan has come under fire from many directions, charges that it is ethically flawed are

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usually the first to be raised. The threshold question is whether rationing is ever justified. This ethical critique asserts that the emphasis on quality of life in the ranking process inevitably violates the principle of the sanctity of human life. For example, intensive care services for treatment of newborns weighing under 500 grams and less than 23 weeks gestation is ranked number 708, next to the bottom of the priority list. The ranking is low because even with unlimited care only a few such infants survive, and those who do almost always have severe mental and physical disabilities. Key to whether aggressive care should be provided is the question of whether certain things are worse than death. As evidenced by public opinion polls following the *Cruzan* right-to-die case before the Supreme Court, most, but by no means all, people believe that some lives are not worth living, although they are distinctly uneasy about having the government make that assessment.

A related argument is that rationing is morally justified only after all other efforts at cost containment have been exhausted. The contention is that Oregon has not earned the right to ration beneficial care because tremendous waste remains in the health care system. Possible ways to hold down costs include raising cost sharing, establishing single-payer rate-setting systems, reducing physician fees, cutting administrative costs, rooting out inappropriate use, and making greater use of managed care.

Although such a position is ethically compelling, it may not negate the ultimate need to ration. First, while it is important not to overstate the extent to which changes have actually been made, government and employers have used many of these cost-containment methods over the past 10 years without having made much of a dent in the rate of increase in health care spending. As Tufts University physician William Schwartz has pointed out, many cost-containment initiatives may result in worthwhile one-time savings, but they will not materially change the rate of increase in health care costs, which is largely driven by changes in health care technology.

Granting that rationing is sometimes ethically justified, however, does not necessarily mean that it is justified in the Oregon case. Given the life and death nature of some health care decisions, detractors contend that it is unfair to extend health care to the uninsured poor by rationing care to other poor people when middle- and upper-income Oregonians could more easily make the sacrifices necessary—for example, by paying more taxes. Oregon currently ranks 31st among the states in per capita medicaid spending. Moreover, there is little evidence that Oregonians are, in general, overtaxed relative to the rest of the country. Oregon is one of five states that does not have a sales tax.

Although some conservative philosophers contend that there is nothing wrong with a health care system that offers different levels of care for "haves" and "have nots," most supporters of the Oregon proposal would grant that a system that rations only to the poor is less fair than one that rations care across the great majority of people. Indeed, the more visionary of the Oregon supporters see this initial proposal only as a way station to a system of both universal coverage and universal rationing. Supporters of the Oregon plan reiterate, however, that they did not invent the two-tiered health care system for the poor; it already exists.

The Oregon plan directly confronts the reality that the United States is not going to provide every conceivable medical service to everyone.

Some argue that it is repugnant to require extremely low-income medicaid recipients, primarily children, to "pay" to expand services to other low-income groups by giving up benefits, especially when elderly and disabled medicaid recipients are initially excluded from the rationing scheme. Sara Rosenbaum of the Children's Defense Fund notes that in 1989 medicaid's mandatory health screening and treatment program, the Early and Periodic Screening Diagnosis and Treatment Program (EPSDT), was expanded to entitle children to all medically necessary services without restriction. In addition, changes in federal medicaid eligibility requirements enacted in 1990 will, over the next 10 years, require states to provide coverage to all children below the federal poverty line. Thus, she argues, children can only be made worse off under the Oregon proposal to ration care.

The arguments about children are particularly difficult because poor children are the innocent victims of our society. However, the situation is not nearly as bad as it might appear at first glance. Maternal and child health services are almost uniformly ranked high on the list, and only 22 percent of the condition-treatment pairs "below the line" are predominantly found among children. Moreover, while the 1989 EPSDT changes set a commendable level of coverage for poor children, it is a standard that most people with private insurance do not have. Thus, it is not unreasonable to set a slightly lower standard. Oregon would also cover older children more quickly than required under federal law. Finally, children deserve special attention, but uninsured adults merit health care coverage as well. Uninsured adults are, after all, largely the fathers, mothers, uncles, aunts, and cousins of the low-income children.

Moreover, when the legislature set appropriations, it did so at a level that will generate about $100 million in new state and federal medicaid spending. Thus, it is not accurate to say that the expansion of eligibility will be funded "wholly" by reducing benefits to existing medicaid recipients. Supporters go on to point out that the loss of less important medical services by current medicaid recipients may be more than offset by the gains of coverage for highly important services by the uninsured. Indeed, as a result of the reallocation of resources, overall inequality between the poor and the rest of society is likely to be reduced.

Rankled by the Rankings

Opponents of the Oregon plan also fault the priority ranking methodology. They note that while much of the ranking list has intuitive appeal (for example, appendectomy for appendicitis is ranked above medical therapy for asthma, which is ranked above treatment for diaper rash), some of the rankings are bizarre. For example, routine dental care ranks well above hip replacements and corneal transplants for cataracts.

In addition, the coverage decisions are overly simplistic, failing to address the range of severity within diagnoses and the potential effectiveness of alternative treatments. To make the number of conditions and

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treatments manageable, commissioners compressed too many conditions and possible treatments into too few categories. Each diagnosis therefore includes some people for whom the benefits of treatment are small and others for whom the benefits are large, thus violating the principle by which the ranking is supposed to take place. For example, as Schwartz and Brookings economist Henry Aaron point out, the clinical efficacy of treatment for colon cancer is highly variable. If the tumor is limited to the lining of the bowel, surgery will completely cure almost all patients. If the cancer penetrates the bowel wall, the death rate increases substantially. And if the cancer has migrated to a distant site, surgery is useful only in relieving obstruction of the bowel. Thus the benefits from coverage of surgery for colon cancer will be large for some and small for others. And because the low-benefit service has been covered, other procedures will go uncovered, a situation that is both inequitable and inefficient.

Finally, although the official description of the ranking process emphasizes the hard calculation of net benefits using quality of life measures, there is as much art as science in the ultimate priority list. For most condition-treatment pairs, there are no empirical data on which to base the judgments of their likely effectiveness: the calculations of clinical effectiveness are guesstimates by Oregon physicians. In addition, according to a preliminary analysis by the Office of Technology Assessment (OTA), the "by hand" adjustment by members of the Oregon Health Services Commission was substantial. During the final review, nearly 25 percent of condition-treatment pairs were moved up or down 100 lines or more and another 15 percent were moved at least 50 lines. As a result, OTA concluded, "the exact ranking of the final list would probably not be replicated if a similar process were undertaken elsewhere." In short, the rankings may be largely idiosyncratic to the members of the Health Services Commission.

Oregon's defenders acknowledge that their ranking system is not perfect, but assert that it is better than the alternatives. Certainly it allocates resources better than arbitrary limits on the number of covered physician visits, hospital days, and prescriptions. Moreover, it is not clear that the main rationing alternative—a resource-constrained system—does a better job of equity and efficiency. Under the British National Health Service, primary care is easily available, but there are long waiting lists for hernia repair, hip replacements, and cataract removals, as well as more complicated high-technology procedures such as coronary artery bypass surgery.

The most compelling aspect about the Oregon proposal is that it is a real-life, ready-to-go effort to provide coverage to the uninsured poor.

Sailing against the Political Winds

Yet another concern is how well the necessary budget allocations and the coverage decisions dictated by the priority list will fare in the political process. First, and most critically, Oregon's spending on medicaid, especially after 1993, is likely to be inadequate. In 1990, Oregon voters approved a constitutional amendment that severely limits increases in local property tax rates and requires the state to replace school revenues lost as a result. According to the governor's office, the money available for all state expenses other than schools will drop precipitously, from $3.1 billion for the 1991–93 biennial budget to $1.9 billion for the 1995–97 budget. Obviously, given competing demands, it is an open question whether Oregon will appropriate enough money for the medicaid program to provide a decent level of care. Worse, the Congressional Budget Office recently estimated that the incremental cost of providing the proposed medicaid benefit package will be two to three times as large as calculated by the state. Even with a reasonably-sized contingency fund for the first budget period, the consequence of budget overruns or reduced budget allocations will be to shorten the priority list and cover fewer condition-treatment pairs. Although Oregon Governor Barbara Roberts has pledged to terminate the demonstration waiver "if our benefit package to the poor drops to a level of inadequate care," she has not said what that level is.

The other political objection is that the technical deficiencies of the priority ranking system will lead to a profusion of horror stories that will undermine support for the plan and discredit the idea of rationing. In this scenario, newspapers, television, and radio will be filled with stories about the obvious need for care of people whose conditions fall below the line compared with the superfluous care for people whose conditions are above the line. Although a plausible scenario, and one that should make politicians nervous, it is not clear that the situation will be radically different from the one that now exists, where medicaid will cover treatments of the flu while the uninsured who need coronary artery bypass surgery go uncovered.

Barriers to Implementation

Implementing the priority rankings is not going to be easy. Providers will have to learn the list and become substantially more knowledgeable about diagnosis coding than they are now. Moreover, as pointed out by OTA, providers seeking to care for their patients are likely to "upcode"—describe conditions in such as way that they will be categorized into condition-treatment pairs that are "above the line." For example, treatment for emphysema, a chronic respiratory condition, is ranked relatively high on the list, while treatment for chronic bronchitis, another chronic respiratory condition, is ranked low and would not be covered. Thus, a physician who wanted to be paid for treating a patient with chronic bronchitis might code the condition as emphysema. Similarly, physicians could break the symptoms of an uncovered condition into components that fit the covered categories. Upcoding would generate higher costs that could reduce the number of condition-treatment pairs covered. Health economist Thomas Granneman of SysteMetrics, Inc., a consulting firm, notes, however, that Oregon intends to rely heavily on health maintenance organizations and certain physician groups, in which the service organization receives a fixed payment, thus greatly reducing the incentive to bill for uncovered services.

Should the Waivers Be Approved?

Should Health Care Financing Administrator Gail Wilensky and Health and Human Services Secretary Louis Sullivan approve Oregon's request for medicaid

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waivers? The answer largely depends on how the policy issue is framed. As a rationing methodology, the priority ranking list is seriously flawed and cannot be confidently relied on to determine that a given procedure for a particular individual with one condition is more effective or socially important than a different procedure for another individual with a different condition. But Oregon deserves credit for being the first to develop a priority ranking system, and future efforts, which are inevitable, will be much better for it.

On the other hand, considered from the standpoint of what is covered and what is uncovered, the proposed benefit package for the medicaid and uninsured populations is not too bad and could be made significantly better without much trouble. Of course, for the uninsured, any coverage at all is a plus, but even the medicaid population will receive a set of benefits that, with some modification, many would consider adequate. For example, in addition to quite broad coverage for maternity and child services, new services for medicaid patients include routine preventive health services for adults (including cholesterol and colon cancer screening), hospice services, and preventive adult dental services. Ironically, given how the process began, several types of organ transplants for adults, including most heart, bone marrow, and liver transplants, would be newly covered for Oregon medicaid patients.

At line 587, Oregon has almost, but not quite, funded an adequate benefit package. That the package is not quite adequate is demonstrated by the 31–9 rejection by the Oregon State Senate of a motion to apply the benefit package to their own health insurance. Moreover, although certain condition-treatment pairs were placed lower on the list because of concerns about effectiveness and cost, the benefit package cannot be considered truly adequate so long as it excludes 8 pairs that the Oregon Health Services Commission deemed "essential to basic care" and 51 pairs assessed to be "very important." Oregon must go at least somewhat further down the list.

Oregon must also commit to a minimum, specific level of coverage for the entire period of the demonstration. State legislators should not be allowed to shorten the priority list if it turns out that they miscalculated the costs or that the property tax revolt shortchanges other state services. To obtain the federal waivers, Oregon should have to stick with a predetermined level of services, which should be somewhat in excess of line 587.

The most compelling aspect about the Oregon proposal is that it is a real-life, ready-to-go effort to provide coverage to the uninsured poor. Especially after the collapse of the never-implemented Massachusetts plan to mandate employer-sponsored health insurance, there is no other proposal on the political landscape that will actually provide insurance for the uncovered any time soon. If health care reform is ever to get beyond rhetoric, studies, and proposals, we need some hands-on experience. If Oregon lengthens the list and guarantees maintenance of that level of coverage, it might be the demonstration that helps us end our national disgrace in health care. ■

Table 1. Categories of Services Used in Creating the Priority Ranking System

CATEGORY OF SERVICE	DESCRIPTION
ESSENTIAL	
1. Acute Fatal I	Prevents death with full recovery *Example: Appendectomy for appendicitis*
2. Maternity Care	Including most disorders of the newborn *Example: Obstetrical care for pregnancy*
3. Acute Fatal II	Prevents death without full recovery *Example: Medical therapy for acute bacterial meningitis*
4. Preventive Care for Children	*Example: Immunizations*
5. Chronic Fatal	Improves life span and quality of life *Example: Medical therapy for asthma*
6. Reproductive Services	Excludes maternity/infertility services *Example: Contraceptive management*
7. Comfort Care	Palliative therapy for imminent death *Example: Hospice care*
8. Preventive Dental Care	Adults and children *Example: Cleaning and fluoride applications*
9. Proven Effective Preventive Care for Adults	*Example: Mammograms*
VERY IMPORTANT	
10. Acute Nonfatal I	Causes return to previous health state *Example: Restorative dental services for dental caries*
11. Chronic Nonfatal I	One-time treatment improves quality of life *Example: Hip replacement*
12. Acute Nonfatal II	Without return to previous health *Example: Arthroscopic repair of internal knee derangement*
13. Chronic Nonfatal II	Repetitive treatment improves quality of life *Example: Medical therapy for chronic sinusitis*
VALUABLE TO CERTAIN INDIVIDUALS	
14. Acute Nonfatal	Expedites recovery of self-limiting conditions *Example: Medical therapy for nonfungal diaper rash*
15. Infertility Services	*Example: In-vitro fertilization*
16. Less Effective Preventive Care for Adults	*Example: Screening of nonpregnant adults for diabetes*
17. Fatal or Nonfatal	Minimal or no improvement in quality of life *Example: Medical therapy for viral warts*

Source: Adapted from Oregon waiver application.

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TERRENCE LYONS

Post-Cold War U.S. Policy toward Africa

HINTS FROM THE HORN

Terrence Lyons is a senior research analyst in the Brookings Foreign Policy Studies program. He is currently working on the conflict resolution in Africa project. He is the author, most recently, of "The Transition in Ethiopia," in CSIS Africa Notes.

On May 27, 1991, while in London conducting talks between the interim government in Ethiopia and three insurgent groups, U.S. Assistant Secretary of State for African Affairs Herman Cohen made two startling announcements. First, he recommended that one opposition movement, the Ethiopian People's Revolutionary Democratic Front, move into the capital, Addis Ababa, and assume state responsibility. Second, in a remarkable reversal of past U.S. policy in support of Ethiopia's territorial integrity, Cohen advocated "self-determination by the people of Eritrea," the former Italian colony absorbed into Ethiopia in 1962. Cohen thus threw U.S. support behind the Eritrean People's Liberation Front, a group that had fought for 30 years for independence in Eritrea. What do these remarkable statements suggest for U.S. involvement in conflict resolution in post–cold war Africa?

Until the late 1980s, the primary goal of U.S. policy toward Africa was to prevent the Soviet Union from dominating the continent. In the Horn of Africa (Ethiopia, Somalia, Sudan, Kenya, and Djibouti) Moscow and Washington competed for influence by providing assistance to regional rivals. In the 1960s and early 1970s the United States supported Emperor Haile Sellassie in Ethiopia while the Soviets backed Siad Barre in Somalia. The pattern of patronage reversed after the Ethiopian revolution in 1974, when Moscow switched its support to Mengistu Haile Mariam in Addis Ababa and Washington subsequently built up its relations with Somalia, Sudan, and Kenya, Ethiopia's neighbors. Beginning in 1989, however, the "new thinking" and preoccupation with internal crises in the Soviet Union led Moscow to disengage from the continent in general and its Ethiopian client in particular. When Mengistu fled into exile on May 21, 1991, Moscow did nothing to save him.

Old Allies at Arm's Length

With the waning of cold war competition, Washington, too, has distanced itself from its old allies in the Horn of Africa. Human rights violations throughout the region, chaos following the overthrow of Siad Barre in Somalia, Sudanese leader Omer Beshir's fundamentalist policies and reluctance to engage in serious talks to end civil war in the south, and Daniel arap Moi's crackdown on prodemocracy activists in Kenya led Washington to back away from its clients. With the exception of humanitarian aid and assistance channeled through such organizations as the United Nations High Commission for Refugees and nongovernment groups, the United States suspended support to Sudan, Somalia, and Kenya, often at the insistence of Congress.

Only Ethiopia—left in ruins after three decades of internecine war—saw increased U.S. involvement. There Washington saw a chance to promote conflict resolution, human rights, democracy, and famine relief. Although Cohen's initial efforts in 1990 and early 1991 to set up talks between Mengistu and the Eritrean People's Liberation Front met with little progress, the work paid off when Mengistu fled and all parties turned to Washington for assistance in May 1991.

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Help from Washington

The United States accepted the task of organizing transition talks for four principal reasons. First, the continuing humanitarian tragedy in Ethiopia, as famine and conflict in one part of the country were followed by devastation in another, increased the sense among both Ethiopians and foreign observers that "someone" must do "something." The United States had been heavily involved in famine relief operations, sending more than $1 billion in food to Ethiopia since the 1984–85 famine. Pictures of starving children on the evening news had simply been too compelling to allow for government inaction. U.S. officials, however, were convinced that unless the various conflicts in Ethiopia could be resolved, food aid would not bring relief to the suffering people.

Second, the recent disasters following regime collapse in Liberia and Somalia showed the consequences of U.S. reluctance to become involved in regional political crises. Rather than stand by and watch Ethiopia disintegrate into violence, Washington hoped that by using diplomacy and dangling a few carrots of future cooperation, it could bring about a peaceful transition.

Third, the question of emigration to Israel for Ethiopia's Jews (also known as Falashas) mobilized an important constituency within the U.S. Congress and gave Ethiopia a higher profile in Washington than would otherwise have been expected. President George Bush sent former senator Rudy Boschwitz as his personal representative to Addis Ababa to press Mengistu and later the caretaker government to allow the Jews to leave. In the interregnum between Mengistu's downfall and the London conference, Israel organized a dramatic airlift of 14,000 Jews to Israel on May 24, 1991.

Finally, Mengistu's departure made the time extraordinarily ripe for diplomatic intervention. All the factions in Ethiopia realized that Moscow no longer sought a significant role in their country. Washington stood alone as the external power that was able and willing to help. Without risking significant resources, Washington hoped to capitalize on this opportunity and work to advance its humanitarian interests.

Diplomatic Bombshells in London

Cohen invited the caretaker government and the three major armed movements—the Ethiopian People's Revolutionary Democratic Front (EPRDF), the Eritrean People's Liberation Front (EPLF), and Oromo Liberation Front—to London on May 27 and made his statements recommending that the EPRDF assume power and supporting the Eritrean right to self-determination. Cohen's role was controversial. Some Ethiopians vigorously protested that "Cohen's coup" had installed the narrowly based EPRDF in Addis Ababa and shut out other, more democratic forces. His statements on Eritrean self-determination alarmed many Ethiopian nationalists who are committed to the unity of their state.

Cohen's support for the EPRDF and the EPLF reflected his belief that U.S. interests in democratization and famine relief for Ethiopia would best be served by working with the forces in control. He realized that he could do nothing to change the military facts on the ground: Mengistu's army was shattered, the EPRDF completely surrounded Addis Ababa, and the EPLF controlled all of Eritrea. Rather than oppose what he could not change, he made a virtue of Realpolitik. The EPRDF occupation of the capital was the result of the collapse of the Ethiopian armed forces and the insurgent's military victory, not a prize bestowed upon them by the United States. Cohen understood that he increased U.S. leverage over the transition process and served humanitarian interests by taking the EPRDF leaders' declared commitment to democracy at face value. If outside powers treated the rebels as a responsible governing party, the EPRDF would be more likely to act as such. Cohen plainly stated, "No democracy, no assistance," making it clear that the good will of the United States and the international community depended on the new leaders delivering on their promises of reform.

The Rewards of Realpolitik

The EPRDF's preliminary policy initiatives suggest that Cohen's strategy to foster more humane government is succeeding. As of late 1991, the leaders in Addis Ababa have made extraordinary efforts to broaden their political base, create a government that includes representatives from a wide spectrum of social groups, and begin long overdue economic reforms. So long as they continue on this path, the United States should remain engaged and supportive.

This unfolding experience suggests the outlines of U.S. policy in Africa in the aftermath of the cold war. One change, put simply, is that Washington no longer needs to fear that if it does not support authoritarian leaders, Moscow will. Thus, in areas of marginal interest, the United States will disengage from states that resist pressures to resolve internal conflicts and introduce reforms to promote democracy and protect human rights.

Cohen's efforts to facilitate a peaceful transition in Ethiopia could imply more—that Washington will not only refuse to support leaders who do not push for democracy but that it will act as a global power to promote conflict resolution, human rights, and democracy even in peripheral corners of the world. Cohen's diplomatic intervention, however, sprang from singular circumstances. The collapse of Mengistu's regime presented a rare opportunity for Washington to play an important catalytic role without expending much more than diplomatic energy. Moreover, having already caught Washington's eye because of the publicity about the 1984–85 famine, Ethiopia gained even more prominence because of the issue of Jewish emigration.

Problems that require significant expenditure over many years in countries that are not able to apply constituent pressure on Congress will probably be treated differently. Washington's inaction in the face of the political crisis in Zaire this fall, despite decades of support for Mobutu Sese Seko's regime, followed the pattern seen in Liberia and Somalia, not that of Ethiopia. Cohen's use of his limited leverage in Ethiopia was deft and impressive. But it does not herald a new era of policy in support of humanitarian goals. ■

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JUDICIAL

The Case for Abolishing

FRANK M. COFFIN

Frank M. Coffin is a a Senior U.S. Circuit Judge, sitting on the Court of Appeals for the First Circuit. His principal sources for this article were The Report of the Federal Courts Study Committee, *April 2, 1990, and Professor Larry Kramer (reporter for the Committee), "Diversity Jurisdiction,"* Brigham Young University Law Review, *vol. 97 (1990). He is grateful to his career law clerk, Barbara Riegelhaupt, for her help in preparing this article.*

The federal courts, already under intense strain, will be increasingly overburdened in the coming years. Indeed, absent some dramatic changes, the prospect, within the very near future, is judicial gridlock. And yet these same federal courts, facing ever increasing demands to hear and decide federal statutory and constitutional cases, find themselves investing up to one-fourth of their judgepower in deciding cases involving state law.

The culprit is a 200-year-old survivor of the Federal Judiciary Act of 1789 that gives federal courts jurisdiction over cases involving state law issues solely because the parties are citizens of different states. Known as "diversity jurisdiction," the provision was originally intended to protect nonresidents from parochial bias in state courts. Although the need for such protection has long since disappeared, and although efforts have been made from time to time to abolish diversity jurisdiction and return these cases to the state courts, diversity still lives. It should not, however, survive much longer.

In late 1988, Congress, recognizing the strains on both state and federal courts, passed the Federal Courts Study Act. The legislation established the Federal Courts Study Committee, composed of members of Congress, federal and state judges, and lawyers, to "develop a long-range plan for the future of the federal judiciary." In April of 1990, after 15 months of intensive work, the committee made more than 100 recommendations for reform. Its most prominent recommendation was to abolish diversity jurisdiction, with minor exceptions, as by far the most effective reform in both meeting the current federal caseload crunch and rationalizing our dual federal-state system. Indeed, eliminating diversity would provide twice as much relief to district courts as all the other recommendations combined. With a little luck and a lot of work, the recommendation of such an eminent committee could mean the end of the road for diversity.

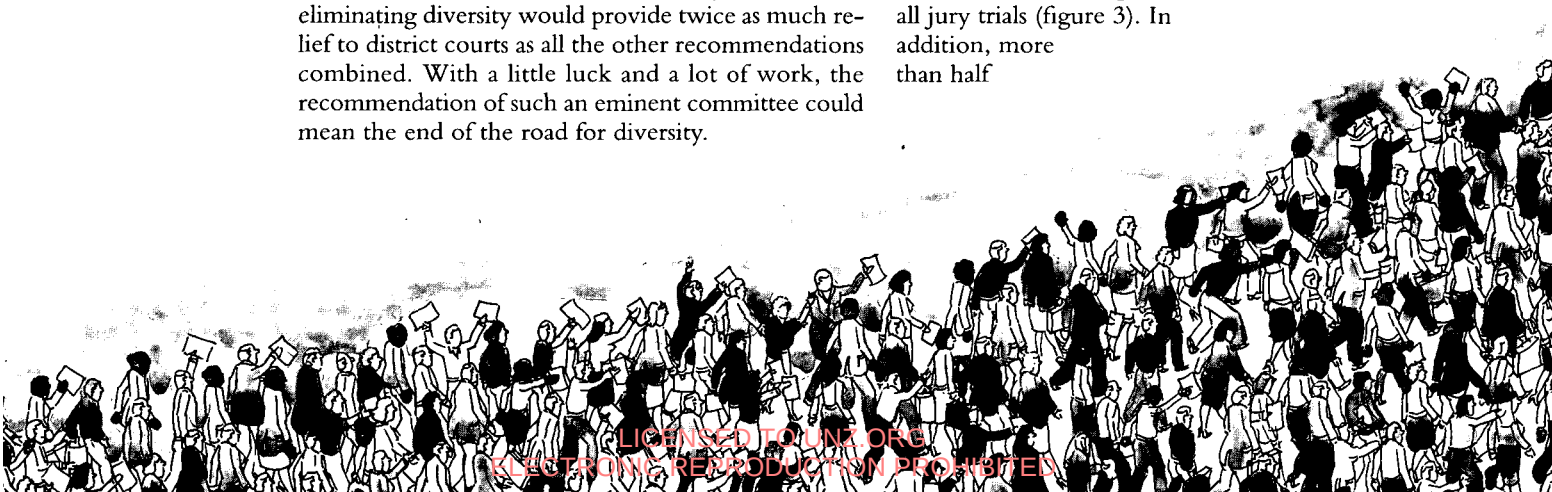
A Burden on Federal Courts

Case filings over the past three decades have risen threefold in federal district courts and tenfold in the courts of appeal. They are predicted to triple again in the next 25 years. A particularly wild card is drug prosecutions. They now account for 44 percent of all criminal trials and 59 percent of all pending criminal appeals and are expected to grow by 20–50 percent between 1988 and 1991. Increasing population, developments in science and technology, new products, environmental pressures, and demands for privacy and autonomy ensure an unceasing flow of federal statutes and entitlements, resulting in inexorably increasing federal litigation.

One option is to expand the federal judiciary to accommodate all such increases in caseloads. But that could mean doubling or tripling the number of judges, which would necessitate an alarming increase in the size of the federal judicial bureaucracy—from some 21,000 today to 50,000 or even 80,000. In addition, a large increase in the number of district judges would require a radical reshaping of our appellate system, with perhaps additional tiers of courts and increased difficulty in achieving uniformity of federal decisional law.

The impact of diversity litigation on federal courts is of jolting dimensions. Since the early 1970s diversity cases have accounted for one-fourth of the district courts' civil docket, one-fifth of their total docket, and 10–14 percent of the dockets of the courts of appeal (figures 1 and 2).

Even these statistics understate the real time and effort invested in diversity cases. A better measure is the number of trials, particularly jury trials, in district courts. In fiscal year 1990, diversity cases accounted for 40 percent of all trials, jury and nonjury, and more than half—53 percent—of all jury trials (figure 3). In addition, more than half



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GRIDLOCK

Diversity Jurisdiction

of all cases that have been pending for more than three years are diversity cases (figure 4).

A detailed study by the Federal Judicial Center in 1988 concluded that abolishing diversity jurisdiction would eliminate 193 district judges (30 percent of the 636 district judgeships authorized as of December 1, 1990) and 22 appellate judges, as well as jurors, magistrates, and clerical personnel, at an estimated annual saving of $131 million.

That estimate is probably conservative in view of the considerable baggage accompanying so many diversity cases—the law of deciding about diversity (determining whether complete diversity exists, whether the parties are properly aligned, whether there is collusion among the parties, whether removal is appropriate, or remand indicated, and whether certification to the state court for its opinion on a controlling issue is called for). With the abolition of diversity, these issues would not have to be decided by any court, state or federal.

The effect of sheer numbers is exacerbated by the "make work" aspect of diversity decisions and their limited life and purpose. In many diversity cases, the federal court is reduced to agonizing searches for clues to allow it to guess at what a state court might hold on a given issue. By contrast, the state court itself, after deliberation, knows perfectly

ILLUSTRATION BY LEW AZZINARO

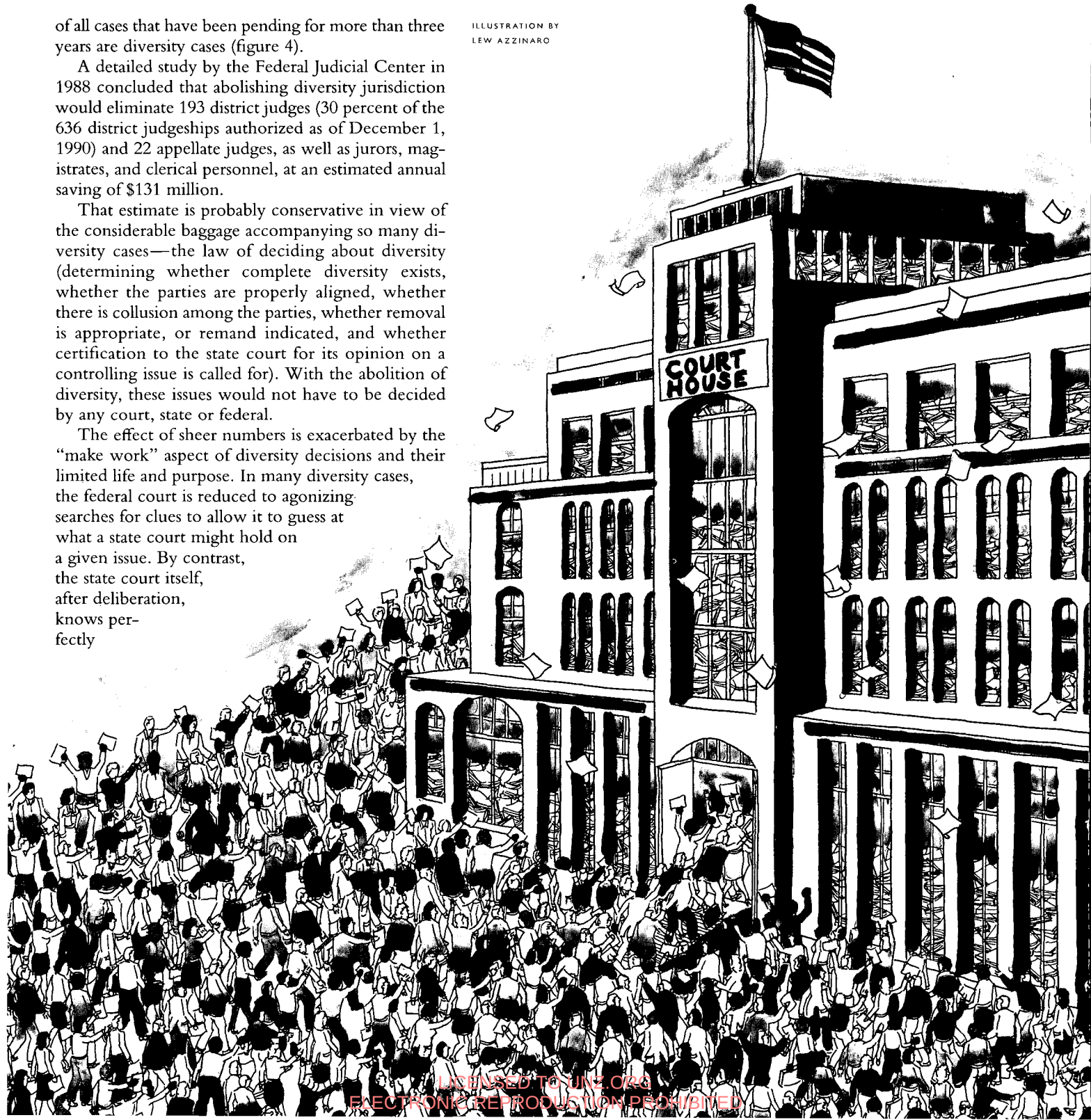

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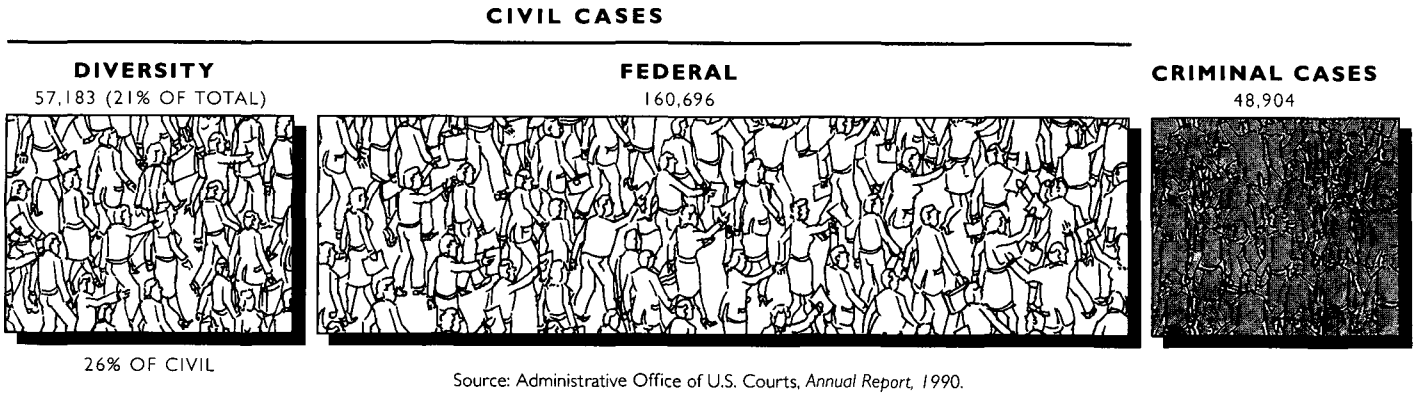
Figure 1. Diversity Cases in Federal District Courts

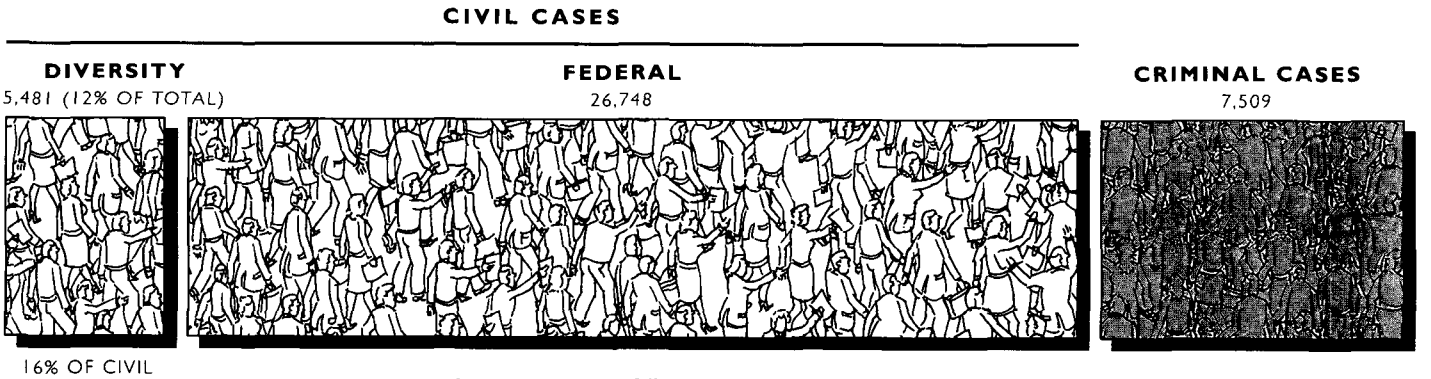
CASE FILINGS, YEAR ENDING JUNE 30, 1990



Source: Administrative Office of U.S. Courts, *Annual Report, 1990.*

Figure 2. Diversity Cases in Federal Courts of Appeal

CASE FILINGS, YEAR ENDING JUNE 30, 1990



Source: Adminstrative Office of U.S. Courts, *Annual Report, 1990.*

well what it thinks. Moreover, the federal decision, however painfully arrived at, does not make law. It simply decides the instant case. Indeed, at times the effect of the decision is to retard the development of state law.

Finally, of course, to the extent federal courts are busy with diversity traffic, they are not readily accessible for litigants whose cases involve federal statutory or constitutional questions. Caseload pressures thus threaten to delay or deny access to federal courts to those with the strongest principled claim to them.

An Affront to State Courts

Depending on how the figure is calculated, between 98 percent and 99 percent of all court cases in this country are filed in state courts. Most people, most of the time, must look to state courts for justice. If our dual court system is to serve its purpose, it cannot offer differing standards of justice or quality of courts and judges.

Many state judges, understandably, consider diversity jurisdiction a standing affront. One clear message of perpetuating diversity jurisdiction is that state courts cannot be trusted to decide fairly when one party resides beyond state borders. Another is that state courts are in general inferior to federal courts. A third face to the affront is the friction caused by federal pronouncements on novel questions of state law, which, as noted, sometimes conflict with or retard the latter's development. And a fourth message is that those states having courts that genuinely require reform need not act because an alternative forum is readily available. Indeed, in this case, injury is actually added to insult. Diversity cases are disproportionately filed by large corporations, who are served by a crucial cadre of the legal profession's most powerful and respected lawyers. And these lawyers, assured of a federal forum for their multistate corporate clients, feel no compulsion to labor for better support for their state's judges and court system.

How do state courts view diversity? They believe that it should be abolished. As long ago as 1977 the Conference of Chief Justices, without dissent, passed a resolution stating that state courts are "able and willing to provide needed relief to the federal court system" by assuming "all or part" of the diversity jurisdiction now exercised by federal courts.

Chief Justice Robert J. Sheran of Minnesota, then chair of the Conference's Federal-State Judiciary Committee, testified in 1977 before the Senate Subcommittee on Improvements in Judicial Machinery that "diversity jurisdiction should be returned to the state court systems whether the federal court systems are overburdened or not." He acknowledged that as a practicing lawyer, before his elevation to the bench, he had sometimes found it preferable as a matter of strategy to start in or remove to federal court, but he made

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this vital distinction: "I think it entirely proper for advocates to choose the available route which best serves the interest of the client. But I submit that the Congress cannot improve the administration of justice by accommodating considerations of trial strategy."

Two Hundred Years Old and Still Counting

With the federal courts groaning under the weight of diversity cases and the state courts willing and able to take them on, what accounts for the resistance to change? In fact, arguments supporting diversity jurisdiction abound and invite scrutiny.

The original argument for diversity, as noted, was the need to provide insurance against state court discrimination aimed at "outsiders." Diversity jurisdiction, however, has long outlived that justification. As the Federal Courts Study Committee observed, "Although there may be bias and prejudice in state courts, as there unfortunately is in many American institutions, it does not fall along state boundary lines."

Such prejudice against outsiders as does exist can best be dealt with, as it once was, by a specific remedy. Between 1867 and 1948, Title 28 of the U.S. Code contained a provision allowing removal of jurisdiction from a state court only on a showing of bias. When the code was revised in 1948, the provision was dropped, the Reviser noting that "the practice of removal for prejudice or local influence has not been employed much in recent years." Local bias, apparently, was no more serious a problem 50 years ago than it is today. Still, restoring the specific remedy would serve as a useful shield.

Among metropolitan lawyers, a widely shared reason for resistance to abolishing diversity jurisdiction is an unfamiliarity with local rules and procedures. That argument cannot carry much water. Most states now have procedural rules very similar to those of the federal courts. Some large states have not yet followed suit, but the fact that procedural rules may require an extra learning effort presents no greater a barrier than the different substantive rules and laws of a state. Indeed, referrals back and forth between firms and lawyers for reasons of parochial expertise are routine.

One justification for diversity jurisdiction, raised obliquely or sotto voce, is that federal courts, in their expedition and in the independence and ability of their life-tenured judges, give better judicial service to litigants than do state courts. Almost 20 years ago, Judge Henry Friendly addressed this argument: "There is simply no evidence that 'protracted delay, inefficient or untrained personnel, and procedural complexities and restrictions' are characteristic of state trial courts in the 1970s or that such courts are incapable of dispatching ordinary civil litigation not having a federal aspect." And in 1976 a task force chaired by Griffin B. Bell reported to the American Bar Association that "the high quality of justice dispensed in state courts makes resort to the federal courts unnecessary." I suspect that in the ensuing years most if not all states have seen measurably improved performance in their court systems.

This is not to say that all differences of quality between state and federal courts have been eliminated, any more than have differences among the 94 federal district courts. It is probably true that in some states delays are excessive. Yet states widely differ in their record for expedition. Unfortunately, politicized state judiciaries exist in some states where judges are popularly elected. And many states today, facing crushing deficits, are forcing their courts to live on a starvation diet. But the answer to real or perceived differences in expedition and quality cannot be to abandon the cause of striving for excellence in all state court systems.

Yet another argument in favor of diversity, sometimes voiced by federal judges, is that exposure to state common law issues provides welcome relief from multidefendant drug conspiracy cases, lengthy antitrust trials, tedious habeas cases, and ground-breaking civil rights matters. Lawyers and judges also occasionally applaud the "interplay" and "migration of ideas" between lawyers practicing in state and federal courts. But today, with many areas of federal law relying on state principles of tort and contract and with state courts given concurrent jurisdiction over many issues of federal law, lawyers and judges have ample exposure to both state and federal law, wholly apart from diversity cases.

A final argument against abolishing diversity jurisdiction is that it would merely shift the burden of excessive work from the federal system to the state system. According to a 1989 National Center for State Courts study, however, abolition would add an average of only 11 cases for each state court judge of general jurisdiction. Moreover, the burden would be quite evenly distributed among states. The percentage increase in tort and contract cases in 22 states, large and small, would range between 3 percent and 6 percent. In New York, where opposition to abolition of diversity jurisdiction is substantial, the increase in a state trial judge's caseload would be only 4.6 percent.

Nevertheless, the burden on states would not be inconsequential. Authors of a study for the National Center for State Courts and the Conference of State Court Administrators have manifested their concern over the recent Federal Courts Study Committee recommendation to abolish diversity by offering a "counterpoint." They have compared caseloads for all federal district courts and general jurisdiction trial courts in four states, California, Michigan, North Carolina, and Oregon. Their sobering conclusion is that "All four states have more than *twice* the civil filings per judge . . . than the U.S. district courts." Felony case filings per judge varied from two to ten times those in the U.S. district courts. There is no question that states taking on the responsibility of diversity cases need additional resources. The Federal Courts Study Committee itself strongly recommended that Congress "provide funds to the state jurisdictions for a reasonable period to help them adjust to the increased caseload." The investment of such funds would result over time, but not much time, in substantial savings.

Lawyers: Diversity's Only Friend

The long history of debate on the issue of abolition of diversity jurisdiction has involved a unique confrontation. On one side are lined up executive branch officials, the Judicial Conference of the United States, the

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Conference of State Chief Justices, the American Law Institute, almost all legal scholars, and state and federal judicial administration research centers. On the other stand important segments of the private bar. In the deliberations of the Federal Courts Study Committee during 1989 and 1990 the lineup was the same: the only committee members to oppose abolition were its two representatives from the private bar.

The attitude of the metropolitan trial lawyer was well expressed in 1978 Senate hearings by Phoenix lawyer John P. Frank, representing a lawyers' Committee to Maintain Diversity Jurisdiction.

> Senator DeConcini. When it comes right down to it, lawyers are opposed to the elimination of diversity because they want the choice of a forum; is that right?
>
> Mr. Frank. You bet.
>
> Senator DeConcini. What is the main factor in making the choices of forum as a practitioner?
>
> Mr. Frank. The principal factors . . . are, No. 1, first and foremost, the quality of justice. Are we likely to get a fairer and better trial in one place than the other? Second, there is the speed of the thing. . . . In short, we make no apology about the fact that we like to have two competing systems.

Frank's reasoning is thoroughly understandable as a matter of litigation strategy. But it does not provide a principled basis for determining the allocation of cases between the state and federal court systems. An important public issue deeply affecting both state and federal courts must not turn on a lawyer's strategic objective of advancing only his own and his client's interests.

A Proposal for Action

The recent report of the Federal Courts Study Committee provides a unique opportunity to avert the impending gridlock in federal courts. But if that report is to lead to effective action, it will require concerted action on the part of all involved.

First, the federal judiciary must be seriously committed to the goal of abolishing diversity jurisdiction. In the past, abolishing diversity has routinely been an agenda item for special committees of the Judicial Conference of the United States and for the Conference itself—the judiciary's top body. But the issue has seldom rooted deeply enough into judges' minds to receive a critical assessment of facts, a careful analysis of pros and cons, and a deliberate decision about what is best for the court system. Until and unless federal judges themselves, with forceful Judicial Conference leadership, become deeply convinced of the rightness of abolition, there can be no expectation that anyone else will be.

To deepen and broaden their commitment to abolishing diversity, judges must be provided detailed factual background and analysis going beyond the necessarily brief discussion of the Federal Courts Study Committee report. Two likely instruments suggest themselves. First, the concerned and effective Federal Judges' Association represents a sizable majority of all federal district and circuit judges and is well organized, professionally staffed, and led with spirit. Second, the yearly judicial conferences of the 13 federal circuits can provide useful forums for discussing diversity.

Equally important is the continued and strong support of the state judiciaries. Unanimity among all the states is not required. But the Conference of State Chief Justices must demonstrate by a continuing solid majority that the states desire to see an end to federal diversity jurisdiction as simply inappropriate to the late twentieth century.

It should be clearly understood at the outset that diversity jurisdiction cannot be eliminated simply by passing a law without regard for consequences. Although, as I have reported, studies show that the impact on state courts would be manageable, it nevertheless would be substantial. If Congress, the ultimate decisionmaker on the issue, agrees to abolish diversity jurisdiction, it should realize that it is shifting, in one dramatic move, much court traffic to state courts unprepared to deal with it. Therefore, a necessary first step is an in-depth study of the needs of states and inquiry into sensitive ways to allocate federal funds to serve those needs during a reasonable transition period. The Federal Courts Study Committee report recommended that the State Justice Institute take on such a project. The Federal Judicial Center might also participate. The goal would be to assemble, rather quickly, relevant data and a menu of alternative financing arrangements.

Assuming that the federal and state judiciaries are still solidly united in seeking an end to federal diversity jurisdiction, judicial leaders, together with other concerned representatives, should explore the issue with leaders in both the House and Senate and develop appropriate supporting papers. From this process could emerge a consensus that the time for a principled resolution of the diversity jurisdiction problem had arrived. Even in the absence of such a consensus, agreement on a legislative program that would enlist the most serious and open consideration of all members could be hammered out.

Finally, bar organizations, national, state, county, and municipal, are uniquely positioned to garner support among the nation's lawyers for abolishing federal diversity jurisdiction. Herein lies a real test for the legal profession. Can they confront the issue of eliminating diversity jurisdiction on a truly principled basis—not as lawyers protecting strategic options for their clients, but as a public profession with a special responsibility to contribute to the administration of justice?

Don't Leave War to the Generals

If diversity jurisdiction is finally to be put aside as a useless relic of bygone days, it will be because of support from beyond the borders of the legal community.

Let me cite a suggestive experience. During the last half of the 1980s I was chair of the U.S. Judicial Conference Committee on the Judicial Branch. Our chief mission at the time was to restore compensation to the judiciary, Congress, and the executive branch that had been lost through two decades of inflation. Although such success as was achieved—and it was considerable—must be attributed to the steadfastness and

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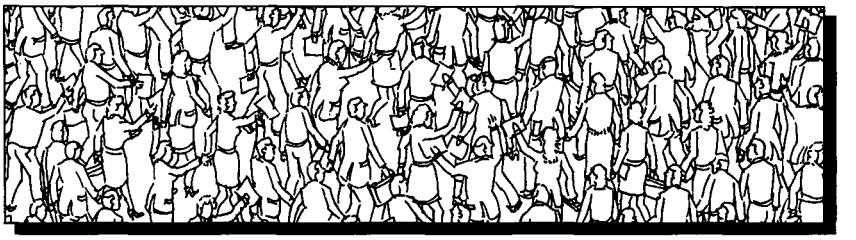
Figure 3. Diversity Cases as Proportion of Civil Trials in Federal Courts

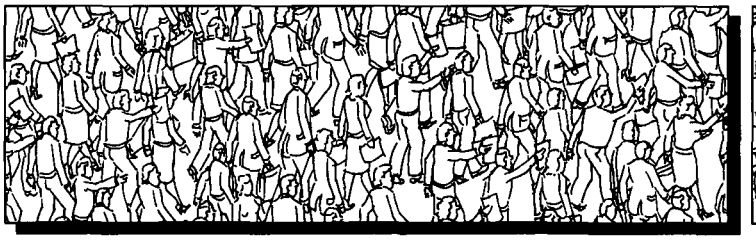
CASE FILINGS, YEAR ENDING JUNE 30, 1990

DIVERSITY TRIALS—JURY AND NONJURY
3,711 (40% OF TOTAL)

OTHER CIVIL TRIALS—JURY AND NONJURY
9,263



DIVERSITY JURY TRIALS
2,549 (53% OF TOTAL)



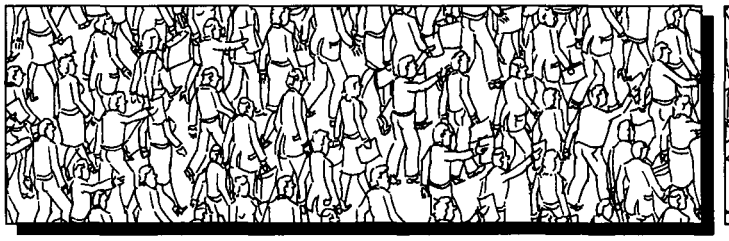
OTHER CIVIL JURY TRIALS
2,234

Source: Administrative Office of U.S. Courts, *Annual Report, 1990.*

Figure 4. Diversity Cases as Proportion of Civil Cases Pending 3 Years or More in Federal Courts

CASE FILINGS, YEAR ENDING JUNE 30, 1990

DIVERSITY CASES
12,325 (51% OF TOTAL)



OTHER CIVIL CASES
11,725

Source: Administrative Office of U.S. Courts, *Annual Report, 1990.*

courage of key congressional leaders, I am convinced that the work of many others was essential.

Joining groups of judges and present and former employees of the executive branch was a broad coalition of supporters including the American Bar Association and the American College of Trial Lawyers, representatives of the corporate community, Common Cause, the National Commission of the Public Interest, and a surprising number of supporting editors, commentators, and columnists. They were no match, in the short run, for sulphurous disc jockeys and piles of tea bags dumped on Capitol Hill. But in the long run they helped create a significant reservoir of citizen understanding that made congressional action possible. This kind of broad-based group and citizen support can make possible the achievement of the most basic reforms advancing the administration of justice.

Most issues of public governance involve a clash of principles—autonomy vs. community, environment vs. jobs, individual liberty vs. social order. Abolition of diversity jurisdiction is devoid of such a clash. Here the contest is between principle and tactical advantage for one class of litigants. That the issue has been effectively stonewalled for so long is probably attributable to its being treated as a matter solely for judges, academics, and lawyers to decide. Just as decisions about war and peace are too important to be left to generals, rationalizing the roles of federal and state courts, as we enter our third century as a nation, is too important to be left to the legal profession. This is a citizen–good government issue whose time has come. ■

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WHY THE 1980S ECONOMIC EXPANSION LEFT THE POOR BEHIND

UNTOUCHED BY THE RISING TIDE

DAVID M. CUTLER AND LAWRENCE F. KATZ

Economic growth has traditionally been seen as the dominant source of gains for the poor. From World War II through the early 1980s, economic data showed a positive and steady correlation between overall economic growth and the well-being of the poor.

During the 1960s, for example, rapid economic growth and a relatively stable economy dramatically reduced the share of Americans living in poverty, by 10.3 percentage points. During the 1970s, a period of unstable economic conditions and slow growth, poverty rates were relatively constant. Although the recession of the early 1980s saw an almost 4 percentage point increase in poverty, an analyst in 1983 would have expected six years of sustained economic expansion to lead to another surge in the well-being of the nation's disadvantaged.

The anticipated benefits for the poor failed to materialize fully. The overall poverty rate in 1989, after the record-breaking six-year expansion, was 12.8 percent, 1.1 percentage points higher than it was in 1979 and 1.7 points higher than the all-time low of 11.1 percent reached in 1973 (see figure 1). If the "trickle-down" mechanism that had worked so well during the 1960s had been as effective in the 1980s, poverty would have fallen below 11 percent by 1989.

The story is equally true of overall family income inequality—again, the 1980s are a sharp break with historical experience. Ordinarily during an expansion, the share of income going to families in the lower half of the income range increases at the expense of those in the upper half. During the decade of the 1960s, for example, the share of total income received by the lowest quintile grew about 1 percentage point, with a similar drop in income shares among the highest quintile. If historical relations had held up through the 1980s, the 1983–89 period would have seen roughly similar changes in income distribution. In fact, the income share of the lowest quintile actually fell 0.1 percentage point, while the share of the highest quintile grew almost 2 percentage points (see figures 2 and 3). Income inequality increased substantially in the 1980s, belying more than 30 years of macroeconomic experience.

For both the poverty rate and the income shares, these divergences are getting larger over time. The gap between predicted and actual income shares has widened every year since 1983, as has the gap between predicted and actual poverty rates.

David M. Cutler is assistant professor of economics and Lawrence F. Katz is professor of economics at Harvard University. This article is based on their paper, "Macroeconomic Performance and the Disadvantaged," appearing in the Brookings Papers on Economic Activity, 2:1991.

Why Did It Happen?

Analysts are now busy trying to explain why the 1980s expansion conferred so few benefits on its traditional recipients. One explanation is the shift in the population from traditional two-parent families into single-parent, particularly female-headed, families. The shift is indeed large. In 1963, for example, 65 percent of Americans were in husband-wife families with children. By 1989 that figure had dropped below 45 percent. In 1963 only 5.7 percent of people were in families with a single parent and children; by 1989 the percentage had doubled. Because poverty rates are higher for single-parent families, shifts in the population toward these households will necessarily be associated with increases in poverty.

This change is not particularly important in explaining poverty trends of recent years, however. First, most of the change in family composition occurred in the 1970s, not the 1980s. While the increase in poverty rates in the 1970s was thus greater than macroeconomic conditions would warrant, this is much less true in the 1980s. Indeed, poverty reduction was sluggish for all family types in the 1980s. For married-couple families with children, for example, the poverty rate went from 7.0 percent to 7.6 percent between 1979 and 1989. We estimate that if family composition had remained unchanged since the 1960s, the increase in the poverty rate between 1979 and 1988 would have been smaller—0.7 percentage point, rather than the actual 1.1 percentage points. But still—and this is the puzzle—poverty would have worsened rather than improved.

ILLUSTRATION BY ROBERT SOULÉ

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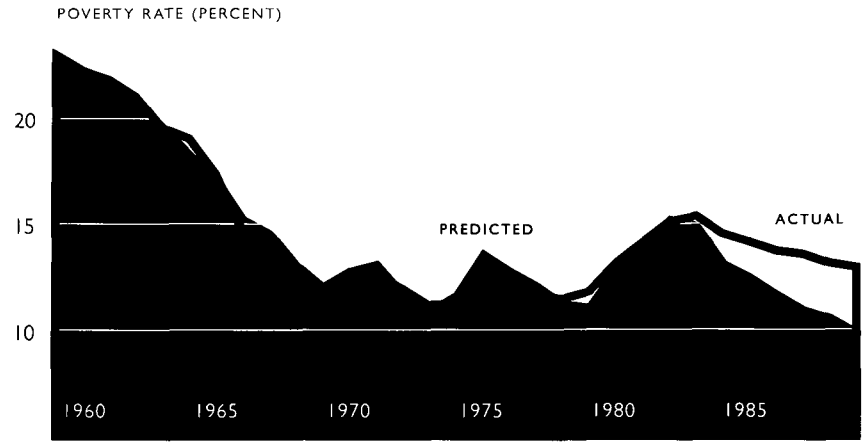
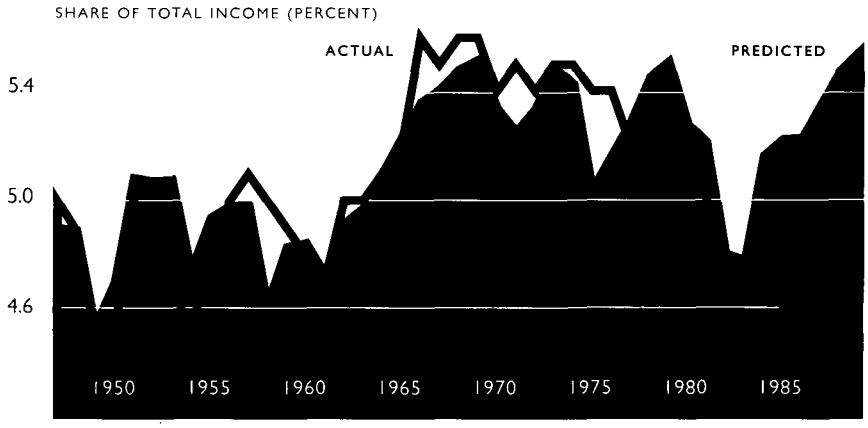
Figure 1. Actual and Predicted Poverty Rates, 1959–89



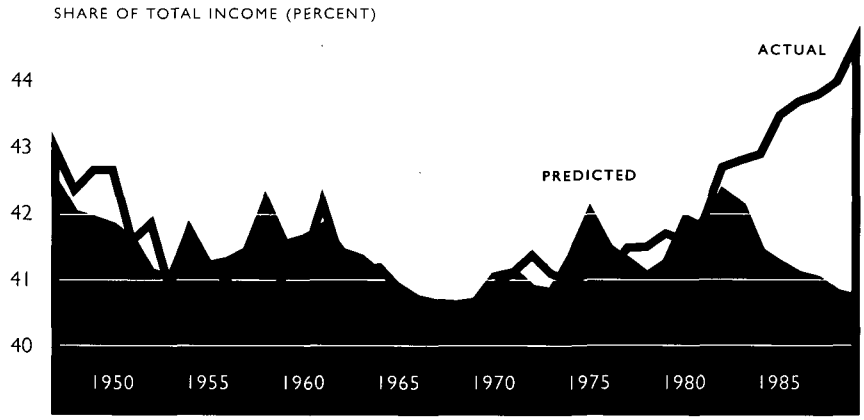
Source: Authors' calculation based on Current Population Survey and *Economic Report of the President.*
Note: Predicted poverty rates based on data through 1983.

Figure 2. Actual and Predicted Income Share, Lowest Quintile, 1947–89



Source: Same as figure 1.
Note: Predicted income share based on data through 1983.

Figure 3. Actual and Predicted Income Share, Highest Quintile, 1947–89



Source: Same as figure 1.
Note: Predicted income share based on data through 1983.

Capital Income

A second explanation for increased inequality in the 1980s and the failure of expansion to reduce poverty significantly is that the expansion conferred most of its benefits on capital rather than on labor. As Lawrence Mishel and David Frankel have put it, "a major reason for the unequal growth in family incomes is that, in recent years, a greater share of national income has been in the form of capital incomes (such as rent, dividends, interest payments, capital gains) and a smaller share has been earned as wages and salaries." It is true that capital incomes (particularly personal interest and dividend income) grew faster than wages and salaries from 1979 to 1989. But these statistics are incomplete on two counts. First, the increase in dividend and interest incomes does not mean that more of national income was paid to capital. Appropriately measured, labor's share of income was constant or increased slightly in the 1980s. Rather, the increase in dividend and interest income reflects a shift within the corporate sector from undistributed profits (which do not show up in measured family incomes) to dividends (which do) and an increase in government interest payments. The first of these is a labeling change rather than an increase in economic disparity. The second is potentially a large change in economic resources, but without knowing who will bear the ultimate burden of debt reduction, it is difficult to determine the winners and losers. In any case, the effect of the increase in capital income is small.

Wage Inequality

A much more important explanation for family income inequality is increasing wage inequality. The real (inflation-adjusted) weekly wages of workers in the top tenth of the work force rose 5 percent from 1979 to 1988, while the wages of those in the bottom tenth fell 12 percent. Wage inequality increased along three primary dimensions. First, the return to education increased substantially, particularly for young workers. From 1979 to the late 1980s, the weekly earnings of young male college graduates increased by some 30 percent relative to those of young men with a high school education or less. Second, among less educated workers in particular, older workers did much better than younger workers. Third, there were sharp increases in wage dispersion within narrowly defined demographic groups.

Figure 4 shows the importance of the increasing inequality of the wage distribution to the income of the lowest quintile. We show the distribution of adjusted family income—family income scaled by the needs measure in current poverty guidelines. We divide family income into three components—earnings of the primary earner, earnings of the secondary earners, and unearned income, primarily government transfers and capital income. As the figure shows, a narrowing of the distribution of primary-earner income increased the share of income going to the lowest quintile by 0.6 percentage point from 1963 to 1969. But a widening of the distribution of primary-earner income caused that share to fall in both the 1970s (1.0 point) and the 1980s (0.6 point). Wages of

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secondary earners did not change the lowest quintile's income share in 1979–89. Changes in nonlabor income exacerbated the trend for primary earners, with the income share of the lowest quintile falling another 0.4 point in 1979–89. Thus, while unearned income is important in accounting for increased family income inequality in the 1980s, the dominant source of the change in family income inequality is shifts in the distribution of primary-earner income.

Is the Rise in Inequality an Illusion?

Although government statistics on family income clearly suggest a deterioration in the standard of living for a large share of American families over the past two decades, some researchers have begun to challenge these income statistics. One objection is that annual income fails to capture income received through in-kind transfers. This is important for the measurement of poverty since families with low money incomes often receive a variety of in-kind transfers including food stamps, housing assistance, and medicaid. Many of these programs expanded rapidly in the 1970s, suggesting that official poverty rates overstate the level and exaggerate increases in poverty during the 1970s. But since these programs did not expand greatly during the 1980s, it is unlikely that imputing a value to in-kind transfers would have any significant effect on poverty trends during the past decade. In fact, according to the U.S. Bureau of the Census, while the official poverty rate increased by 1.8 percentage points (from 11.7 percent to 13.5 percent) from 1979 to 1987, a poverty rate adjusted for the value of in-kind and noncash transfers increased by a slightly larger 2.1 percentage points (from 8.9 percent to 11.0 percent) over the same period.

A second argument, suggested by Christopher Jencks and Susan Mayer among others, is that more direct measures of material well-being, such as crowding, adequacy of housing, and access to medical care, indicate that living standards continued to improve over the 1970s. Mayer and Jencks argue, using this evidence, that income may be a poor measure of trends in economic well-being over the past two decades. Indeed, Dale Jorgenson has suggested that economic welfare is more appropriately measured by consumption than by income, and Jorgenson and Dan Slesnick have argued that income-based measures of poverty are "severely biased" measures of the level and trend of poverty.

In table 1 we show income- and consumption-based poverty measures. In both cases we employ a poverty line updated using the Personal Consumption Expenditure deflator rather than the standard Consumer Price Index. We also use the needs level in the current poverty scale in all years.

At any particular point in time, income- and consumption-based measures provide quite different pictures of poverty. As table 1 shows, the poverty rate measured using family consumption is substantially lower than is the poverty rate measured by income. Such findings are consistent with the view that lifetime resources (measured by consumption) are more equally distributed than are resources at particular times (measured by annual income).

Figure 4. Components of Change in Share of Family Income Going to Lowest Quintile

PERCENTAGE POINTS

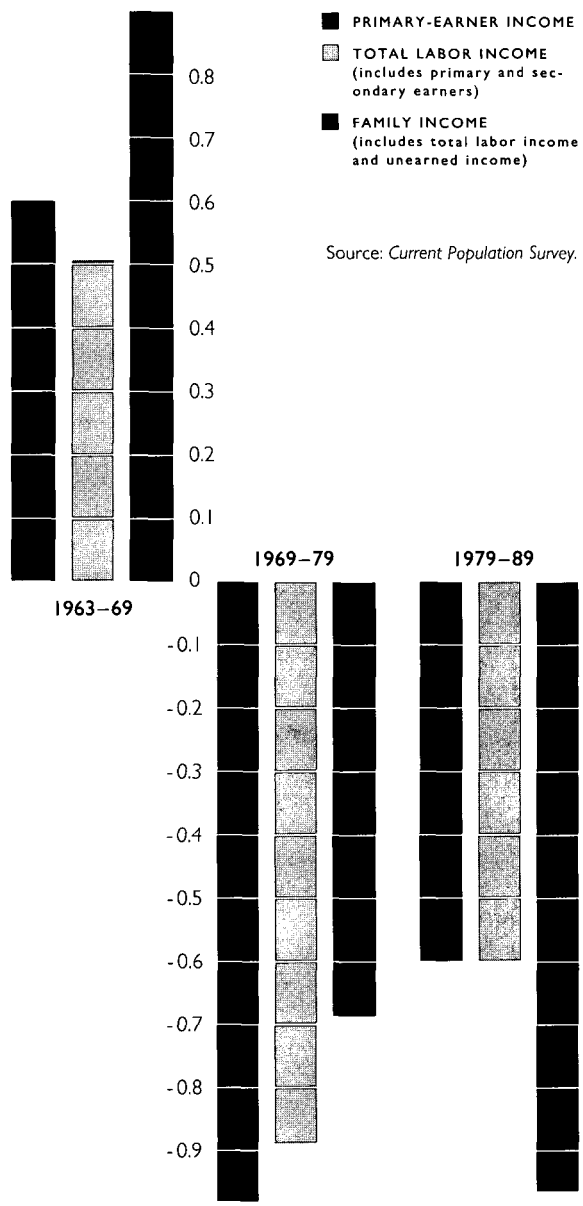

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Table 1. Poverty Rates and Resource Shares as Measured by Income and Consumption

INCOME-BASED MEASURES					
GROUP	**1963**	**1972–73**	**1980**	**1984**	**1988**
		POVERTY RATES			
ALL	20.0%	11.6%	11.9%	12.6%	12.0%
Adults, 18–64	15.2	8.7	9.2	10.3	9.6
Elderly, 65+	32.6	17.3	13.6	10.0	10.2
Children, 0–17	23.5	15.0	16.9	19.1	18.3
		QUINTILE SHARES			
Lowest	4.9%	5.3%	5.0%	4.4%	4.4%
Highest	43.1	42.6	41.5	44.1	44.1

CONSUMPTION-BASED MEASURES					
GROUP	**1960–61**	**1972–73**	**1980**	**1984**	**1988**
		POVERTY RATES			
ALL	13.0%	6.2%	7.5%	8.7%	8.6%
Adults, 18–64	9.5	4.8	6.0	7.2	6.7
Elderly, 65+	13.6	7.0	6.2	5.4	3.8
Children, 0–17	17.9	8.9	11.1	13.5	15.2
		QUINTILE SHARES			
Lowest	8.1%	9.0%	8.2%	7.5%	7.3%
Highest	36.6	35.1	36.2	37.4	37.5

Source: Authors' calculations from the Current Population Survey (for income) and the Consumer Expenditure Surveys (for consumption).

But as the table also makes clear, trends in economic well-being appear quite similar regardless of whether resources are measured by income or by consumption. Poverty rates calculated using both income and consumption fell sharply from the early 1960s to the early 1970s, by 8.4 percentage points in the case of income and 6.8 points in the case of consumption. Both measures have increased since the early 1970s, however. Income-based poverty rose 0.4 percentage point from 1972–73 to 1988, and consumption-based poverty rose 2.4 points.

Table 1 also shows one other disturbing trend. Almost all of the recent success in the war on poverty has been in poverty rates for the elderly. According to both income and consumption measures, the poverty rate for the elderly was lower in 1988 than in 1980. For working age adults, and particularly children, however, the reverse is true. Both groups had substantial increases in poverty in the 1980s. Indeed, the consumption data suggest that poverty in the United States is concentrated almost exclusively on those aged 64 and below, and particularly on children. Poverty rates for children are four times those for the elderly. The nonelderly population has also been the hardest to reach with income transfers, however.

The same is true for the share of income or consumption received by the lowest quintile of the distribution. The share of income to the poor fell by almost 1 percentage point from 1972–73 to 1988; the share of consumption fell more than 1.5 percentage points. The data send a very clear message: changes in income inequality are indicative of large and important changes in total resources. Both measures of economic hardship suggest a deterioration at the lower end, even in the face of rapid macroeconomic expansion.

Who Was Left Behind in the 1980s?

Traditionally, economic expansions help the disadvantaged in two ways. First, increased labor demand creates jobs for the unemployed. Second, strong growth changes the nature of jobs available to workers. During expansions, low-wage workers can get higher-paying jobs than are available during economic downturns. But as table 2 shows, the gains traditionally conferred by expansions were largely absent during the 1980s. In the 1960s, economic gains were widespread. Young families (generally poorer) did better than older families, and family income increased evenly at all education levels. Among older workers, the less educated did even better than the more educated. In the 1980s, the reverse was true. Young families, and particularly the less educated, fared much worse than older, more educated families. The adjusted income of families headed by individuals with fewer than 12 years of schooling, for example, fell more than 2 percent a year relative to families headed by a college graduate.

The economy of the 1980s is clearly different from that of the 1960s. Labor demand has shifted because of increased international trade competition, the decline of unions, and improved technology. Manufacturing employment grew during the 1960s and fell equally dramatically during the 1980s. *Economists*

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have tried to assess formally the extent to which industrial and occupational shifts can explain changes in the wage structure in the 1980s, but such research is as yet inconclusive.

Policy Implications

In many respects, the problems of sustained poverty and rising inequality are not macroeconomic in nature. Increased economic growth and job creation still boost the welfare of the poor, and policies to promote economic growth are clearly an important part of the war on poverty. But strong economic performance is not the panacea many claim it to be. The conventional wisdom that macroeconomic growth is the most important source of benefit to the poor and that industrial and occupational upgrading will necessarily boost young, less educated workers during an expansion is contradicted by the experience of the 1980s. Large and sustained shifts in labor demand away from the young and poor can more than offset improvements from increased job availability.

Indeed, the consequences of such labor demand shifts, if prolonged, may be even more severe than their effects on poverty or the distribution of income. William Julius Wilson, Richard Freeman, and others have argued that a decline in job availability for disadvantaged youths carries with it a deterioration in the social conditions in inner cities, an exodus of the middle class, and an increased incidence of behavior harmful to future earnings prospects—crime, drug use, dropping out of school, and teen childbearing. Such effects imply that even demand shifts that are reversed in several years may have long-term effects on living standards of the poor. Indeed, in the booming Boston labor market of 1989, the fraction of young blacks from poor neighborhoods who perceived more earnings potential in crime than in legitimate jobs had increased substantially from the late 1970s, a time of much greater unemployment and much weaker earnings prospects. The Boston experience suggests that strong labor markets alone may not stop social disintegration in poor neighborhoods. Policies designed to directly offset adverse neighborhood and peer influences and to keep young people in school may be far more important.

The 1980s also suggest that well-designed transfer policies may affect the welfare of the disadvantaged more than previously thought. The contrast between the experience of Canada and that of the United States is instructive. Between 1979 and 1986, pre-transfer poverty rates increased even more in Canada (1.9 percentage points) than in the United States (1.7 percentage points). As Maria Hanratty and Rebecca Blank document, however, differences in the generosity of the Canadian and U.S. government transfer payments led to very different changes in post-transfer measures of poverty. Post-transfer poverty actually fell 0.7 percentage point in Canada from 1979 to 1986, while it increased more than 2.6 points in the United States. The ultimate lesson of the 1980s may well be that renewed efforts to fashion appropriate transfer policies for the disadvantaged, both when economic performance is weak and when it is strong, can be an important component of the war on poverty. ■

Table 2. The Expansions of the 1960s and 1980s: Changes in Family Income

1988 DOLLARS

	1960s			1980s		
GROUP	1963	1969	ANNUAL CHANGE	1983	1989	ANNUAL CHANGE
AGE OF FAMILY HEAD						
Under 25	$ 8,561	$11,726	5.2%	$ 9,568	$ 9,834	0.5%
25–34	10,413	13,900	4.8	14,689	15,904	1.3
35–44	11,044	14,212	4.2	17,548	19,889	2.1
45–54	13,778	17,825	4.3	21,300	24,534	2.4
55–64	14,059	18,156	4.3	20,629	22,383	1.4
EDUCATION OF FAMILY HEAD						
Less than high school	8,984	11,055	3.5	10,345	10,309	-0.1
High school	12,068	15,268	3.9	16,011	17,250	1.2
College or more	17,077	22,053	4.3	26,546	30,269	2.2
FAMILY HEAD AGED 25–34						
High school	10,824	13,864	4.1	13,452	14,486	1.2
College	14,476	19,628	5.1	22,420	26,550	2.8
FAMILY HEAD AGED 45–54						
High school	15,376	19,131	3.6	20,772	22,747	1.5
College	22,120	25,784	2.6	31,270	36,731	2.7

Source: Authors' calculations using Current Population Survey.

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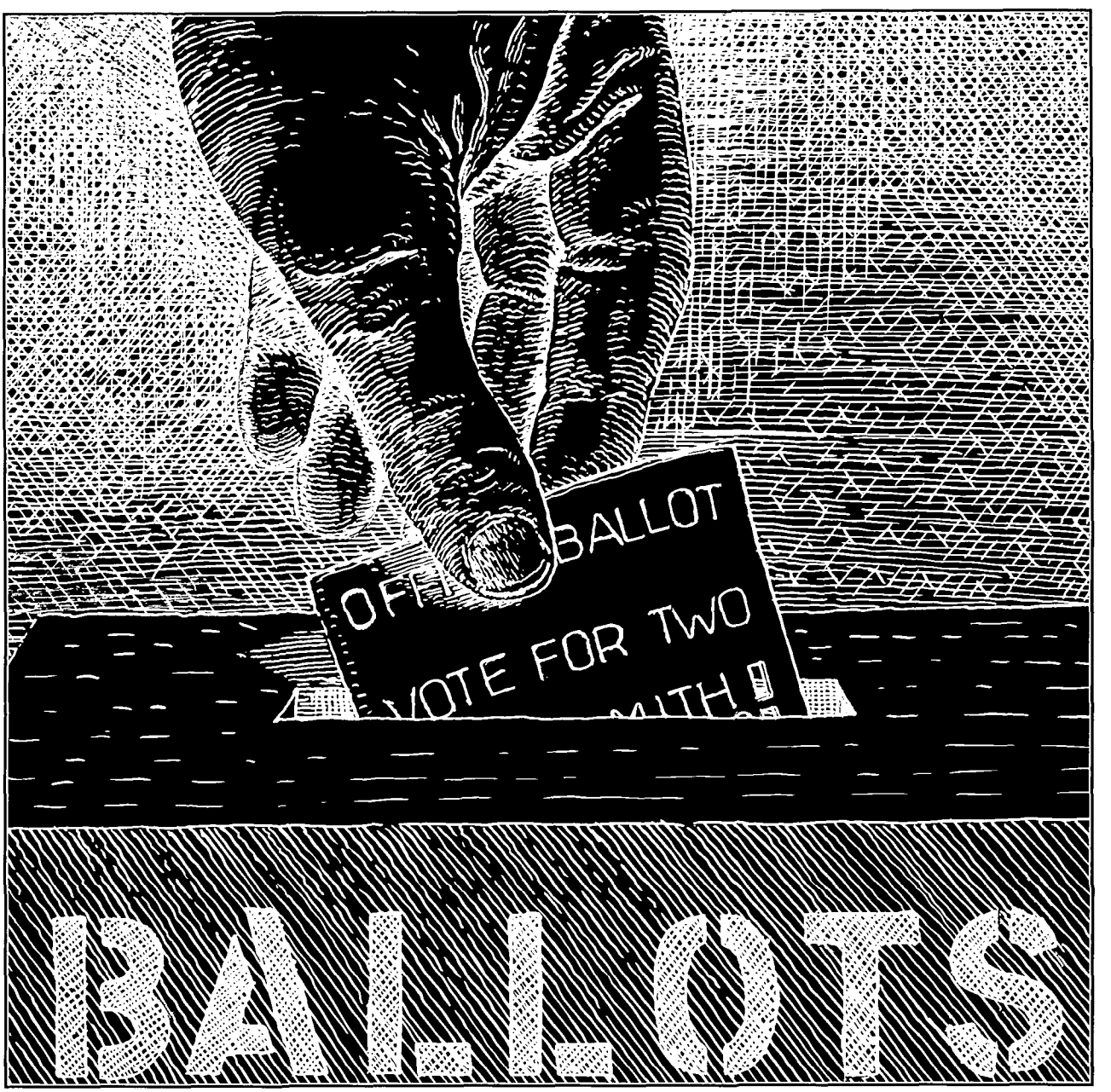
Voting Rights and Democratic Theory



Toward a Color-Blind Society?

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Bruce E. Cain

When the Voting Rights Act was passed in 1965, it was a relatively simple law. Its purpose was to enable black Americans to overcome such obstacles as literacy tests so that they could exercise their right to vote. But by the mid- to late 1970s, it was apparent that it would be necessary to take more far-reaching steps to give racial and ethnic minorities a real voice in their government. Since the mid-1970s, the thrust of the Voting Rights Act, as amended by Congress and interpreted by the courts, has been to prevent discriminatory election practices from muffling that voice.

Reaction to the new emphasis and to related court decisions has sometimes been heated. Resentments abound, especially in communities that have been forced to alter their traditional electoral procedures under legal duress. Some objections, of course, are due simply to the redistribution of power consequent to changes in the rules of the electoral game. Other objections are based primarily on grounds of principle. Democratic theory has little to say to those who resist voting rights changes based on naked self-interest and power. It can, however, shed some light on arguments based on principle.

The most common such objection to the Voting Rights Act is that it bestows special representational advantages on some racial and ethnic groups but not others. Entitlements to representation based on race and ethnicity, it is argued, are unfair and dangerous, inflaming rather than cooling racial and ethnic tensions. It is a viewpoint widely held in the American white middle class. I remember the consternation of a senior Los Angeles city councilman of Italian descent when the city attorney explained to him that section 2 of the Voting Rights Act might make it illegal to divide the Los Angeles Latino community into six different districts. "Italians never had such protections," he said. "Why should Latinos get it? This is un-American."

In fact, the courts have been quite cautious in their characterization of the voting rights that the Constitution and the Voting Rights Act give minorities. They have, for instance, steadfastly denied that minorities have a right to be represented in proportion to their numbers (even while accepting the disproportionality between population and representation as an indicator of a voting rights violation). The courts speak in terms of remedies for situations of political exclusion rather than permanent entitlements to particular kinds of representatives. And rather than assume that all underrepresented groups automatically qualify for protection, the courts require that groups meet specific conditions.

But a serious issue of representation remains: to what degree should a democracy give special recognition in any form to the rights of disadvantaged minorities? At its heart, the voting rights controversy is really another variant of a long-standing dilemma in democratic theory: how should minority rights be balanced against the majority will in a system of government that derives its legitimacy from the consent of the governed?

In my view, democratic forms of government are consistent with many different kinds of trade-offs between majority and minority rights, including the particular trade-off implicit in the Voting Rights Act. A more formidable challenge to the Voting Rights Act is the strong cultural predisposition in the United States against trading off in favor of minority rights. The cultural bias is so pervasive that it may ultimately frustrate legal strategies aimed at softening the hard majoritarian edge of U.S. politics.

Voting Rights and the Proportionality Debate

The debate over voting rights in the United States is a modern and peculiarly American variant of an issue that has long engaged political scientists—the relative merits of more and less proportional systems of representation. As opposed to strict majoritarian systems, proportional systems award representation in relation to electoral and population shares. Whereas it is possible in a majority system to win 49 percent of the vote and still get no seats, any proportional representation system with a reasonable threshold requirement will yield to a given party a proportion of seats roughly equal to its proportion of votes. In such a system, more people feel that they have a voice in the legislature. What that legislature does thus derives more solidly upon consent. In other words, the argument in favor of proportionality relies heavily on considerations of the legitimacy of the system.

By contrast, the argument against proportionality emphasizes efficiency and stability. Critics point, as an extreme example of inefficiency, to the Fourth Republic in France, in which the legislature was so splintered by proportional rules that the result was perpetual stalemate, breakable only by crisis. They also note that proportional representation governments in countries such as Italy and Israel change frequently, with extremist parties flourishing on both the right and left.

As proponents of majoritarian systems see it, minority groups can be excluded from representation for the sake of governability without much sacrifice to systemic legitimacy. As long as conditions of voting eligibility are not biased or arbitrary, and as long as everyone's vote is equally weighted, every individual has a fair chance to influence the outcome of the election.

How is the voting rights controversy related to this classical dispute? Section 2 of the Voting Rights Act prohibits any rule, institution, or procedure that has the effect of diminishing the opportunity of a community to elect a representative of its own choice. At-large electoral mechanisms, for example, have been challenged because they permit a white voting majority to elect representatives of their choice and to exclude, or nearly exclude, those of minority communities. Gerrymandered lines can mix white and nonwhite neighborhoods in a way that dilutes the votes of the minority community.

In a 1986 decision, *Thornburgh* v. *Gingles*, the Supreme Court enunciated a test for a section 2 claim. Is a group large enough and located in a compact enough area to elect a representative if grouped into a single district? Is the group politically cohesive? Is there evidence of racially polarized voting by the white majority against candidates from that group?

What the *Gingles* test amounts to is a requirement for some degree of greater proportionality from ma-

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joritarian rules given the past experiences of particular disadvantaged groups and the facts of white voting behavior. The claim accepts the general validity of majoritarian rules and seeks only to make a special exemption from their effects. On the continuum of the classical trade-off between legitimacy, efficiency, and stability, the American voting rights controversy focuses on a very small movement in the proportional direction at a point well near the majoritarian end of the scale. From the perspective of democratic theory, the proposed shift is not large.

Are Color-Conscious Voting Rights Policies Undemocratic?

In the specific sense that recent trends in American voting rights have tried to create a small degree of greater proportionality for blacks and Hispanics, we can call them color-conscious as opposed to color-blind. Are they undemocratic? The argument that they are goes something like this. Democracy rests on two principal tenets. The first is popular sovereignty. Put most simply, whoever has the most votes wins. A related notion is that the more votes a given choice receives, the greater its inherent legitimacy. Thus, choices that have greater popular support should generally prevail over those with lower overall support. The second tenet, relative equality, means simply that when votes are counted, each should have the same weight.

The Voting Rights Act is often used to strike down an at-large election arrangement (in, say, a particular county) and replace it with a district system, which, because it does not "dilute" the vote of a minority community in a sea of white votes, is more likely to give that community a chance to elect its own representative. But, critics object, a district system may well elect candidates who win a smaller overall number of votes than would the candidates elected by an at-large system. If so, mandating a district system over an at-large system favors choices with less legitimacy and denies the people of the county as a whole the use of a voting mechanism that scores well from the perspective of popular sovereignty. Moreover, since some groups are given voting rights protection and others are not, the system does not rest on equality.

I do not believe that either objection has much force. True, a majoritarian system is more democratic in the sense of favoring choices with the highest general level of support. But the popular sovereignty principle is often modified and abridged in practice. Democratic elections, for example, can be governed by plurality, simple majority, or supermajority rules. A candidate with 45 percent of the vote can win in plurality systems but lose in majority or supermajority systems. For that matter, neither U.S. senators nor the U.S. president (through the electoral college) is elected strictly on the basis of popular sovereignty. Unless we want to dispute the assignment of the term democracy to our own or to many European countries, we must accept what is true in practice—that the strongest versions of popular sovereignty are not required to have a democracy.

In addition, democratic theory has long weighed the issue of how popular sovereignty should be balanced against minority rights. James Madison, for instance, was as much concerned about majority tyranny as minority tyranny. Are there, for example, individual rights in a democracy that are inviolable whatever the majority thinks? Many segments of the U.S. electorate are surprisingly intolerant of individual liberties, but the courts protect individual liberties nonetheless. Protecting the voting rights of minority groups that have suffered much discrimination historically by the white majority is very much in the Madisonian tradition of offsetting majority tyranny.

Providing that protection, however, means that protected groups receive considerations that are not bestowed on others. Some critics of the current emphasis of the Voting Rights Act did not object to the law initially. After all, it simply gave blacks the same right—the right to vote—that the majority already enjoyed. What disturbs these critics now is the shift in the law's focus from suffrage to the problem of vote dilution. The court had not previously recognized or protected the right to an undiluted vote for other political groups and individuals. If Republicans, Democrats, those identifying with small parties, and independents have no such right, why should it be given to blacks and Latinos? In short, it appears that certain racial and ethnic minorities are getting a special new right, thereby violating the second principle of democracy—political equality.

We shall discover over the next decade whether in fact the right to an undiluted vote will be extended to other groups in the electorate. The opaque court decision on vote dilution, *Davis* v. *Bandemer*, had a phrase, clause, or section for nearly everyone on all sides of this issue. But if the right to an undiluted vote remains stillborn for all but racial and ethnic groups, does it violate democratic principles? In my opinion, it does if it makes the right permanent, if it associates that right with some demographic characteristic without regard for historical and sociological circumstances, and if it prescribes it for some groups but not others. I hasten to say that Congress and the courts have tried to date not to violate these three conditions. The decision in *Thornburgh* v. *Gingles*, as noted, refers to remedies, not permanent rights; it specifies conditions that have to be met to qualify for protection; and it explicitly rules out any right to proportional representation.

Opponents reply that de facto the court has made it a permanent right, that the court tends to accept rather weak evidence on discrimination and racially polarized voting, and that the Voting Rights Act is slipping away from its initial goal of preventing exclusion to a new goal of achieving near or exact proportional representation. From my perspective in California, I just do not see this trend. The California district courts have ruled against minority plaintiffs in several instances, and in the much publicized litigation against Los Angeles, the plaintiffs prevailed where pretty blatant ethnic gerrymandering had caused political exclusion.

The Irony of Voting Rights Achievements

It is quite possible that the real problem in the 1990s will not be that the effects of empowering minorities through the Voting Rights Act are too strong, but that the majoritarian predisposition of American political culture will ultimately prevail over those gains and that

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minorities will continue to feel politically impotent. Foremost of my concerns is that at the same time that the Voting Rights Act is being used to remedy gross underrepresentation in legislative bodies at various levels of government, representative institutions are themselves being weakened.

Successful litigation against discriminatory election mechanisms has resulted in the election of numerous black and Latino candidates (and also some white representatives with close ties to these communities). But while federal, state, and local legislative bodies are becoming more racially and ethnically representative, the electoral majority is reasserting its power by undercutting and constraining the power of representative government.

This development, which I term the "new populism," expresses the frustrations and concerns of the white middle and working classes through the increasing use of direct democracy mechanisms such as referenda, initiatives, and recall. Its effects are wide-ranging. It may constrain by constitutional amendment the amount of money a state legislature can spend, limit the sources of governmental revenue, tell the legislature how to spend its budget (Proposition 98 in California requires that 41 percent of the state budget go to public schools), mandate pay-as-you-go approaches to public services, or make public policy in areas (insurance reform, toxics regulation, health care, laws governing criminals) that were previously in the realm of the legislature.

The new populism is most pronounced in California, but the trend toward direct democracy is also evident nationwide. Although the point has not been made very often, referenda and initiatives are essentially forms of at-large elections. As such, they tend to produce outcomes with a majoritarian skew. Indeed, the problem may actually be worse when the subjects of the initiatives or referenda are highly technical or when the ballot is long and confusing. In these cases, people with lower education levels (which will of course include many disadvantaged individuals) will have particular trouble making choices. Special elections are also prone to socioeconomic biases, and primaries can produce different kinds of skew depending on which party has more contested races.

Is this trend intentionally discriminatory? Probably not, at least not in California, but the effects are increasingly clear, and there are definite racial overtones. For the past decade, the California Assembly has been controlled by a powerful black speaker, Willie Brown. Many of the key people in his leadership circle are Latino and black legislators from safe, overwhelmingly Democratic, inner city seats who have the experience and electoral freedom to take on important committee responsibilities. Because their districts are poor and needy, their political orientation is liberal. Thus, to many moderate and conservative white voters, the legislature looks unrepresentatively liberal. They see the need to take action through direct democracy to constrain what that legislature does.

I do not mean to imply that this is the only important cause of the new populism in California. The power of special interests over the legislature because

The real problem in the 1990s may not be that the effects of empowering minorities through the Voting Rights Act are too strong, but that the majoritarian predisposition of American political culture will ultimately prevail and that minorities will continue to feel politically impotent.

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of the costs of political campaigns is surely also critical. But whatever the primary motive, the increasing use of direct democracy mechanisms undercuts the power of representative government. Thus the hard-won gains of minority groups are partially negated because the very institutions that have been made more diverse are now less powerful, particularly at state and local levels (fortunately, this country does not have a national referendum). There seems to be a kind of equilibrium logic at work. When the Voting Rights Act in essence extended the franchise to Southern blacks in 1965, at-large elections and gerrymandering were used to dilute the political impact of the new minority voters. Now that the Voting Rights Act has been amended to permit legal scrutiny of majoritarian institutions when there is evidence that they are being used unfairly, this effort may be undercut by the majoritarian techniques of the new populism. It appears that every adjustment to give greater weight to minority voices can be offset by new methods of majoritarianism. This is part of what I term the irony of voting rights achievements—in the words of Roseanne Roseanneadanna, "If it isn't one thing, it's another."

It will be hard to counter the trend toward direct democracy (the court will only very reluctantly curb or abridge the right to initiative). But even if the new populism can be reined in, majoritarian biases will probably emerge in a new form. The political system as a whole is very resourceful when it comes to finding ways to resist things opposed by a majority. Purely legal strategies can only make a small dent in the system's majoritarian bias. In the end, minority groups have to focus on how to operate as best they can in the total political environment.

Political Solutions to Political Problems

I have a second and related concern about the evolution of voting rights in the United States: to force the political system to be fairer, people may try to define some things as voting rights that are not rights at all. There is a limit to how far we can litigate our way to better government. Legal intervention into matters of representation is a distinctly second best strategy.

If, in the case of voting rights, the political system had been able to correct itself, the diversity, richness, and flexibility of the early representative system in the United States could have been preserved. Different areas of the country have different representational needs, and in an ideal world it would be nice to preserve the option of varied electoral arrangements (within some broad democratic range) to meet these varied conditions. That diversity has been plowed under by the evolution of the court's thinking about voting rights. "One person, one vote," for instance, has ruled out upper houses in state legislatures that are malapportioned by county or region. To be sure, that principle has ruled out old rurally biased arrangements that were no longer serving a useful modern purpose. But it has also limited the prospects for solutions to new problems.

In a recent case, *Board of Estimate* v. *Morris*, an arrangement that gave the ex officio representatives from boroughs of New York equal votes in board decisions was found to be in violation of "one person, one vote." This ruling will deprive local governments of the use of compromising, transitional schemes that might be used to consolidate cities, counties, and special agencies into some more rational and effective regional government structure. Political goals (nonthreatening merger, consolidation, and rationalization) would be easier to realize without tight constitutional limits. I do not mean to take issue with the court's thinking in this case, but only to point out that something is lost when the court begins to define representational rights very specifically.

The "litigating our way to fair representation" approach was necessary, because the political system had produced gross malapportionment, exclusion of minorities, and other intolerable abuses. So whatever the opportunity costs, the legal strategy must be credited for remedying injustices that the political system could not or did not want to fix. However, we will reach a point in the next decade when the next stage in the political fairness revolution increasingly means proportional or roughly proportional representation. There is nothing wrong with this as a political goal, and it may fit the representational needs of a given community. But it is not a fundamental right of democracy. The choice between more or less proportional systems is a trade-off between the competing democratic concerns of legitimacy, stability, and efficiency. The court is correct in saying that there is no right in the Constitution to proportional representation. Some types of political fairness, such as the right to the voting franchise, can reasonably be defined as matters of right; others, such as the right to an undiluted vote, are not.

I am not denying that there is a role for voting rights litigation in the future. It will no doubt be possible, for instance, to prod communities into more proportional outcomes through pursuing legal remedies. Nevertheless, in spite of all this, I foresee the underrepresentation of Latinos and blacks at all levels of American government as a continuing problem in the 1990s. Demographic disadvantages such as the presence of many noncitizens or a higher than average fraction of people under the voting age, socioeconomic liabilities such as low education and participation levels, and systemic hurdles such as a relatively onerous registration system as compared with other democracies or the increasing role of money and media in campaigns will continue to hinder minority electoral power. The problem of securing minority political power is broader and more profound than that of voting rights.

I fear that too much hope is being placed on legal solutions to these political problems. Too little attention is being given to numerous political changes that would have as much or more effect on black and Latino political power. For instance, the naturalization process for Latinos and Asians could be expedited, voter registration could be simplified, and mail-in and absentee ballots could be used more widely. It could also be useful to scrutinize campaign finance reform more closely from a minority community perspective, strengthen political parties, and find coalition partners who might support institutional changes that yield more proportional results. Securing minority political power requires accepting these broader political challenges and making structural changes that move beyond voting rights per se. ■

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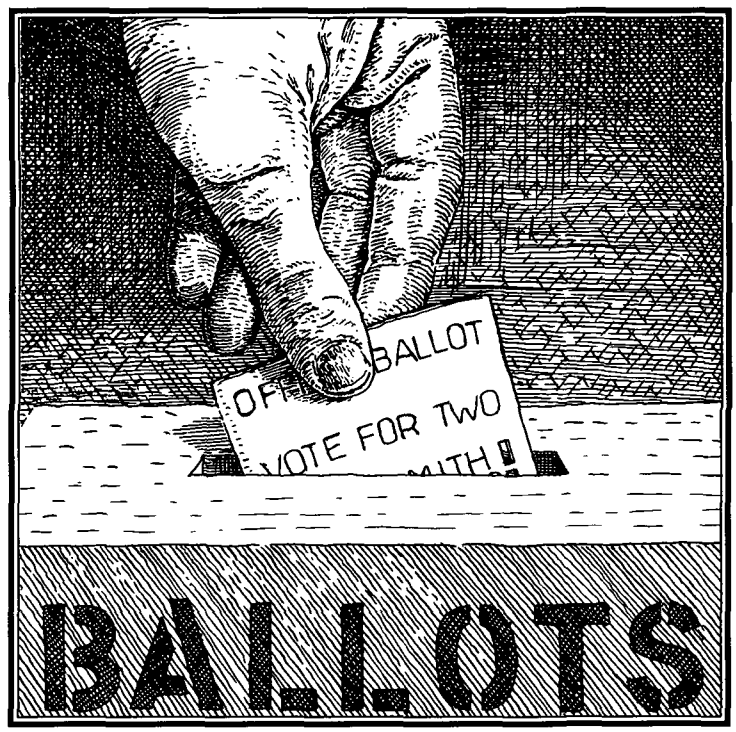
The Voting Rights Act: Some Unintended Consequences

Carol M. Swain

No one can deny the remarkable changes in race relations in this country since passage of the Voting Rights Act of 1965. In 1963 Governor George Wallace told the people of Alabama, "I draw the line in the dust and toss the gauntlet before the feet of tyranny, and I say: segregation now, segregation tomorrow, segregation forever." Ten years later he crowned a black homecoming queen at the University of Alabama. Later he told a biracial conference of mayors, "We're all God's children. All God's children are equal."

Although the Voting Rights Act contributed immensely to these changes, the act has had several unintended consequences that actually impede progress toward a color-blind society. One such consequence is an overemphasis on creating majority-black political units. Despite evidence to the contrary, many assume that black politicians can be elected only by majority-black districts. The drawbacks of this strategy to increase the number of black elected officials are obvious. It does not add up. Blacks are not concentrated enough geographically to create a significant number of new majority-black political units; indeed, population losses threaten the existing minority enclaves.



According to the 1980 census, 13 of the 17 black-represented congressional districts lost more than 10 percent of their population. Preliminary data from the 1990 census show that the congressional districts with the greatest losses are in the Northeast and Midwest, the regions currently producing most black representatives.

Another inadvertent negative consequence of the Voting Rights Act is an overemphasis on creating "safe black districts." This strategy has meant the redrawing of some majority-white districts, such as Atlanta's fifth district, Tennessee's ninth, or Illinois's seventh, that elected black representatives before being redrawn to have a black majority. Increasing the black population in such districts wastes black votes that might have greater effect in districts that are not already sending blacks to Congress.

Proportional representation itself has distinct shortcomings for increasing black political influence. Even if African Americans—12 percent of the population—held 12 percent of the political offices in this country, they would be unable to implement their legislative goals without help. No doubt proportional representation systems could be devised to increase the number of black officeholders in the short run, but in the long run such electoral arrangements could be a barrier to building black strength. They could serve as a cap, holding the proportion of black legislators to the proportion of blacks in the population. Proportional representation also could deprive white legislators of a sense of obligation to blacks and other minorities.

Finally, by forcing change on the white majority, the Voting Rights Act may have lessened minorities' sense of the need to build support through broad-based coalitions. The "new populism" cited by Bruce Cain may have sprung up in part because black elected officials have not engaged in effective coalition building.

Whether to form biracial coalitions has been intensely debated since 1968, when Stokely Carmichael and Charles V. Hamilton wrote their classic *Black Power*. Carmichael and Hamilton argued against such coalitions until African Americans had developed independent bases of power that would allow them to become equal partners. Since the 1960s, thanks in no small part to the Voting Rights Act, blacks have become more politically effective than ever. The time for biracial coalition building has come. ■

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The Soviet Military

BY RAYMOND L. GARTHOFF

The armed forces remain one of the few substantial assets of the lingering central political leadership of the Soviet Union. But for how long? Can the armed forces be sustained, and can the union itself?

The future of the proposed new successor union, a confederative Union of Sovereign Republics, may become clearer in a few months or even weeks. Will the most important sovereign republics agree to belong in any political union? Will they agree on joint or unified armed forces under a central (union or alliance) command authority? Clearly, Ukraine is determined to have armed forces of its own. So, too, are the Transcaucasian states (Georgia, Armenia, and Azerbaijan). The latter are peripheral in political and military as well as geographical terms, but Ukraine is not marginal in any sense. If Ukraine elects to create a large armed force, Russia will follow. And, of course, to whatever extent the Soviet armed forces do not remain under central control, Russia will inherit them.

Even if some republics establish armed forces of their own, all now appear to agree to maintain strategic, and all nuclear, forces under a centralized command rather than under the control of one (the Russian) or several republics. The newly constituted "Strategic Deterrent Forces" (ICBM, strategic bomber, strategic missile submarine, and strategic early-warning, antimissile, and air defense forces) would constitute the core of this force under union or alliance command.

Economic constraints on the size of armed forces, either union or republican, will be severe. And because the union will depend entirely on the republics for support of forces under its control, union and republican forces will compete for scarce military funds. There is also the thorny practical (and political) problem of transition from the present armed forces of the Soviet Union located in all the republics to whatever mix of separate republican and union forces will be created.

Nuclear weapons are of greatest concern, but their ultimate disposition may prove less difficult than deciding what other forces the republics will be prepared to fund but leave under central control, and how to divide up existing conventional arms and force structure, above all in Ukraine.

Many nuclear weapons (optimally all in the republics other than Russia) can and should be dismantled. This would accord with expressed Soviet and Russian intentions to reduce such arms—and in some cases with arms reduction commitments under the Strategic Arms Reduction Treaty. It would also accord with the desire of other republics to become nuclear-weapons free without increasing nuclear deployments in Russia. Many have asked that the dismantling be done under international control or at least observation. In this, the United States and perhaps others (the Conference on Security and Cooperation in Europe, the International Atomic Energy Agency) might play a constructive role—and the sooner the better.

Apart from the ominous new problems of a nuclear state in disintegration and in transition, other problems of the Soviet armed forces have become more acute. The living standards of the armed forces have fallen even more than those of society as a whole. Some 192,000 officers and enlisted men with families are without homes. Despite desperate construction efforts, the problem is growing because of the flood of withdrawals, first from Czechoslovakia, Hungary, and Mongolia, now from Germany and Poland, soon also from the Baltic states, and prospectively other republics as well. As unemployment grows, so will the problems of absorbing the large numbers to be released from military service. On top of the half million released in 1989–91, another 700,000 are already due to be mustered out in 1992–93, and the numbers may grow. There may simply be no money to pay them all if and when the ruble is brought under control. And if there is one thing more dangerous than an army of unemployed, it is an unemployed army.

The armed forces are also embarked on an unsteady reform, moving from conscription toward greater reliance on professional manning, and adapting to a new military doctrine and to the changing political and strategic situation. (Even simply the mission "to defend the country's borders" is an enigma: what country, which borders, and against whom?) The armed forces are also adjusting to the recent abolition of political officers and communist party cells throughout the ranks.

The military must make all these changes with the polity, society, and economy all in flux. For example, not only is the overmilitarized economy being converted to nonmilitary production, but the military must learn entirely new ways to gauge its procurement and subsistence needs and how to meet them. An existing system of farms run by the military to provide some of its own food, while a distraction from a more professional military, is all the more needed as civilian supply channels are diverted.

The array of problems faced by the Soviet armed forces is incredibly complex and difficult. And we all have a stake in their success in responding to the challenge. ■

Raymond L. Garthoff is a senior fellow in the Brookings Foreign Policy Studies program. He is the author of Deterrence and the Revolution in Soviet Military Doctrine *(Brookings, 1990).*

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Should We Cut Taxes?

BY GEORGE L. PERRY

The anemic economic recovery has led to calls for tax cuts from members of both parties. Until Thanksgiving week, President Bush resisted the movement, in part because he has used last year's budget agreement to rule out any fiscal initiatives and in part because he has been getting mixed advice about both the economic and political desirability of tax cuts at this time. However, by now it is widely expected that he will propose tax cuts in his State of the Union address.

But would tax cuts really be a good idea? For a mixture of reasons, most economists oppose them as a way to strengthen the present recovery. A few believe that fiscal actions, whether on taxes or expenditures, have no effect on the pace of economic activity, and so would be pointless as antirecession measures. My reading of the evidence points the other way. Some believe that while tax cuts would add to consumer spending, they would in the process also raise long-term interest rates, thus providing little or no net lift to the economy. This one is trickier. To the extent that tax cuts quicken the expansion, interest rates would be higher. After all, bonds rates would be lowest if a depression were expected. But unless the tax cuts were perceived to be recklessly enlarging future deficits, long-term rates should not rise so much as to offset the tax stimulus.

Finally, many economists oppose tax cuts now because they would enlarge the structural budget deficit in the future when the economy is near full employment. They attribute the weak investment and poor productivity of the past ten years to excessive structural deficits, and believe that reducing the structural deficit is the top priority for fiscal policy.

It is important to reduce the long-run deficit. But with the recovery as weak as it has been recently, the near term deserves attention too. The Federal Reserve should cut interest rates further. But monetary ease will work best if it is in harness with fiscal policy. Most postwar recoveries were hastened by combined fiscal and monetary easing. Yet right now, fiscal policy is at best neutral and may even be moving toward restraint as defense spending starts to fall.

If future defense spending could be cut far enough, some permanent tax reductions might be consistent with declining deficits and other budget priorities. But there is no need to count on that or to take such a permanent step in haste. The best course for now would be a fiscal package that provides a lift to demand in the short run but phases out as the economy comes out of its slump. Such a program would require temporarily lifting the budget constraints agreed to last year, but not permanently abandoning those targets.

In principle, a near-term fiscal stimulus could come from aiding temporarily hard-pressed states that are being forced to raise taxes and lay off workers, or from accelerating or funding more fully already agreed upon federal spending programs. But realistically tax breaks are the only form of stimulus likely to be on the political agenda. They should be made temporary, perhaps in the form of a one-time rebate, in order not to add to structural deficits down the road.

Ironically, the proposals most likely to help the economic recovery are being put forth by Democrats whose chances of unseating President Bush next year would be greatly enhanced by a weak economy. The plans by Senators Lloyd Bentsen and Bill Bradley for refundable tax credits for each child, and Congressman Dan Rostenkowski's plan to rebate the first $200 of all social security taxes for two years, all exemplify the Democratic approach. Most of the money would go to families with tight budgets who both need it badly and could be expected to spend it promptly, thus immediately aiding recovery.

By contrast, everything reminds the president of the capital gains tax. Any proposal put forward by the White House is likely to cut it and also to reintroduce IRA tax preferences that were eliminated in the 1986 tax reform. Whatever else one thinks about cutting the capital gains tax, nobody expects it to stimulate spending in the short run. As for IRAs, their advocates favor them as a way to restrain spending in favor of saving. By no stretch is either an antirecession measure.

The most valid reason to oppose any proposal for tax stimulus now is the fear that, once started, tax cutting would get out of hand. A compromise that pleases everyone in the upcoming election year would result in large additions to the deficit that would grow with time rather than diminish as the economy expands out of recession. Whether it was acknowledged or papered over, such a package would, in fact, permanently derail last year's budget agreement and perpetuate the budget crisis that has paralyzed domestic policymaking.

Mistrust of the political process may thus be a good reason to hope the tax cut movement is checked before it gets rolling. But it should not be confused with bad economic arguments. Temporary, well-aimed tax relief would not lose revenues for the long run and would be a timely supplement to lower interest rates in today's weak economy. If they are not an option, it is a mark against today's political leadership. ■

George L. Perry is a senior fellow in the Brookings Economic Studies program. With William C. Brainard, he directs the Brookings Panel on Economic Activity and edits its journal, the Brookings Papers on Economic Activity.

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Critical Technologies

BY BRUCE L. R. SMITH

A strong technology base is critical both to America's economic performance and to its national security. Yet many observers believe that the nation has slipped badly, losing its technological edge in the automotive, semiconductor, consumer electronic, and other industries. The suggested cure is to develop a list of "critical technologies" to spur innovations and product development in a number of sectors and then to support those technologies until they can demonstrate their commercial feasibility. From that point market incentives will take over.

The Department of Defense, the Department of Commerce, the private Council on Competitiveness, and the White House Office of Science and Technology Policy have all produced such a list.

Four key assumptions lie behind the calls for support of critical technologies. Technological advances of a "leap frog" nature produce new industries, jobs, and economic growth. The United States is lagging badly in the most important new technologies with the greatest economic potential. Government and industry have not invested adequately in R&D. And generic or precompetitive technologies with high commercial potential, once shown to be technically feasible, will be diffused rapidly across the economy.

These assumptions do not bear scrutiny. Job creation and growth are much more likely to result from incremental rather than dramatic technological advance. Though occasionally dramatic breakthroughs do occur, most industrial revolutions reflect concurrent and intersecting discoveries across a wide front of scientific and technical disciplines.

Nor is there general agreement about how sluggish U.S. industry really is. Technologies seen as lagging by some are viewed by others as sources of U.S. strength. Is the United States behind in biotechnology and genetic engineering? Artificial intelligence? Parallel processing? Advanced materials? There is no broad agreement on the current state of affairs and no easy way to assess trendlines in the technologies identified as critical.

As for R&D investment, the United States far outspends other nations. Washington spends more on R&D than do the governments of Germany, France, the United Kingdom, and Japan taken together. Private sector R&D spending for those four countries combined is only slightly greater than the total for U.S. industry. Even if defense R&D is subtracted from total U.S. research spending, the United States still has a dominant position.

Indeed, the problem seems to lie not in R&D, but in manufacturing, in the weak links among the technical disciplines involved in creating the product as well as in relations between the technical side of business and marketing, distribution, and finance. The United States has a sharply lower rate of domestic saving and investment than do other industrialized nations. Status distinctions and barriers that divide scientists and design engineers from industrial engineers and production workers are much more pronounced in the United States than in Japan, Germany, Korea, and other industrial competitors. Typically, U.S. firms also have more distant relations with their suppliers than do firms in Japan and Germany. These factors appear to impair U.S. firms' ability to achieve short product cycles and produce high-quality products for rapidly changing markets.

What has the government accomplished by drawing up its critical technologies lists? Not much. Moving from identifying key technologies to developing and demonstrating commercial potential is tough. The technologies identified as critical are almost coextensive with the entire economy. Are all to be supported or only some? A government program undergirding each would mean a huge investment. If that is too ambitious a goal, how are priorities to be set? The road between demonstration projects and commercially feasible products is a long one. Technology transfer even within the industrial firm is difficult. Industry has been wary of embracing technologies whose feasibility the government has demonstrated because heavy downstream investments may negate commercial potential.

Greater government support for research and for generic technologies may serve some useful purpose. But enhancing competitiveness requires a different set of policies that will make it easier for companies to modernize plant and equipment, retrain workers, and attract investment capital. Such policies might include tax policy changes—for example, the treatment of capital gains and investment tax credits—and perhaps antitrust revisions to allow for closer links between finance and industrial capitalism in the fashion of the Japanese *keiretsu*. Such policies, however, are anathema to the liberals who favor government support for critical technologies.

Republicans like the critical technologies approach because it seems to offer an alternative to industrial policy. Democrats like it because they see in it an opening wedge for broader government programs. That helps explain the appeal of the critical technologies idea and also why the idea will likely remain a sideshow and a distraction from the real issues. ■

Bruce L. R. Smith is a senior staff member in the Brookings Center for Public Policy Education. He is the author of American Science Policy Since World War II *(Brookings, 1990).*

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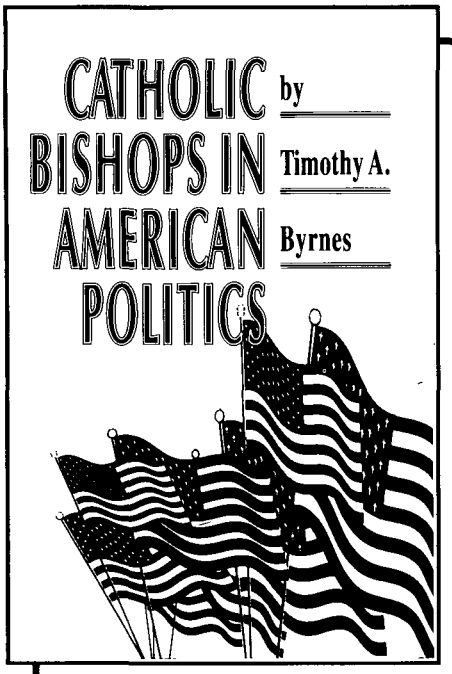

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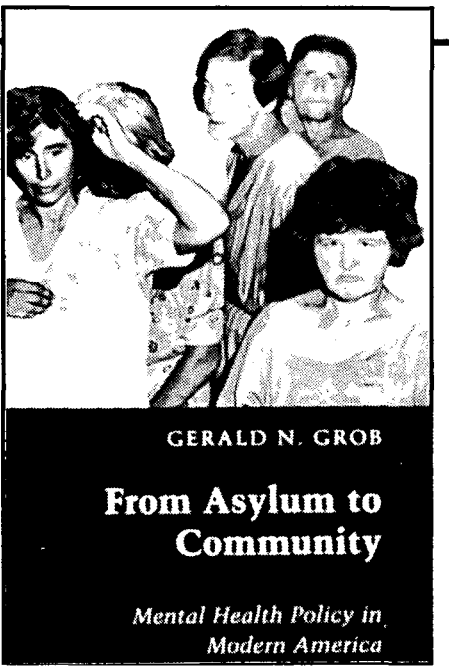

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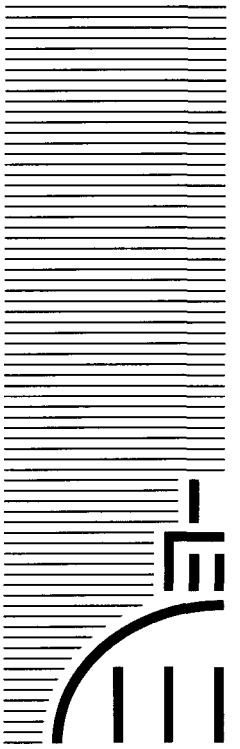

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